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PRISON METHODS IN NEW YORK STATE

A CONTRIBUTION TO THE STUDY OF THE THEORY AND PRACTICE OF
CORRECTIONAL INSTITUTIONS IN NEW YORK STATE

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PRISON METHODS IN NEW
YORK STATE

A Contribution to the Study of the Theory and Practice of
Correctional Institutions in New York State

BY

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PHILIP KLEIN

PREFACE

THESE pages present part of the results of a more comprehensive study, now available in manuscript in the files of the New York School of Social Work, and in part published in the seventy-fifth annual report of the Prison Association of New York. The study was originally undertaken in connection with a general survey of the entire field of the history of organized social work in New York State, planned by Dr. Edward T. Devine, Professor of Social Economy at Columbia University, and Director of the New York School of Philanthropy. The field was divided into six sections, comprising health, labor, relief, child care, crime, and public welfare. The section on crime was to include the treatment of the criminal and the prevention of crime. The writer was asked by Professor Devine to take general charge of this section. The plan of procedure provided for coöperative research by graduate students in Social Economy at Columbia University and at the New York School of Philanthropy, in accordance with plans prepared by the writer, and under his direct supervision. The field of research within the section on crime was divided into a number of parts, each to be entrusted to a research assistant. At the beginning of the academic year 1916-17, studies were under way on five separate parts, and on the general aspects of the subject. It was planned to publish each part in its entirety, with a summary of the important features, coördinating them in a general history of the treatment of the criminal and the prevention of crime in New York State.

Professor Devine's withdrawal from academic work for Red Cross service in France, the advent of the war, and the impending draft of the writer into the army necessitated a substantial modification of the original plans. The section on crime was limited to the study of the correctional institutions and their methods, and the plan of presentation was changed to its present form. The relative amount of contribution by assistants was considerably reduced, but such material as had been gathered was freely utilized. Miss Norma V. Carson's studies of the state and private reformatories for women had been almost completed and proved an excellent source for historical material on those institutions. Miss Sadie Engel's very scholarly contribution on the history of prison labor was well under way, and was freely used as source material for chapters VIII and IX. Miss Freda Fligelman's study of the New York Statutes since 1664, while not complete, yielded valuable material, especially in the matter of early punishment and early legislation. Interesting facts on the state prisons were supplied by Mr. Benjamin Malzberg, and important points in the development of probation traced by Mr. D. W. Lawrence. The manuscript studies of early social work in the colonies by Miss Arrowsmith and Mrs. Mudgett contributed some of the fact material for the chapter on early punishments and the first prisons.

The character of the sources consulted by the writer and by his coöoperators has been, throughout the study, of a primary nature, consisting of legislative documents, reports of institutions, societies, commissions, and, in some instances, newspaper accounts. This was supplemented by such information and experience as was gained by the writer through personal contact with practical problems of penology in the form of inspections, investigations, legislative drafting, relief work, conferences and other activities

devolving upon him as assistant secretary of the Prison Association of New York since 1913.

The present volume contains fourteen of the twenty-four chapters of the study, selected because of their more general nature and possible interest to a wider circle of readers. The ten chapters omitted followed chapter two, and comprised a fairly detailed history of all the types of penal institutions in this State, their origin, growth, and present status. Those interested may find the omitted part in the seventy-fifth annual report of the Prison Association of New York.

Especial obligations of the writer are due to Miss Lilian Brandt for constructive criticism and constant encouragement through the many difficulties of the task; to Dr. Kate Holladay Claghorn for critical comment that helped keep the larger subject in sight through the maze of detail and petty facts, and for being a "friend in need"; to Dr. O. F. Lewis for the generous discussion contributed as a result of his own researches, for a critical revision of the fact basis, and helpful correction of diction; to Miss Martha E. Phillips and Miss Katherine Z. Wells of the research department of the New York School of Philanthropy for a variety of helpful services on all occasions. My obligations to Professor Samuel McCune Lindsay include not only suggestions in the text, aid in preparation for the press and in reading proof, but also the very appearance of the contribution, despite almost insuperable difficulties which his interest alone overcame.

A word of apology is due to the reader for the crude presentation which makes a naturally unattractive subject even less acceptable. Owing to the conditions already referred to as attributable to the war, it was necessary to sift, digest, arrange and organize the entire mass of facts and do the actual writing of what originally amounted to some two

hundred thousand words, in the brief period of three months. The writer entered the army before a rewriting could be undertaken, and was discharged too late to accomplish more than a superficial revision. Nothing short of a charitable disposition on the part of the reader will make up for this very serious deficiency.

P. K.

AUGUST, 1919.

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INTRODUCTION

COMPARATIVELY little literature exists in this country on the practice of penology and still less on its history. F. H. Wines' brilliant contribution in his *Punishment and Reformation* covers a great range of time and space, but concerns itself only with general principles and with the most salient features of the history. In tracing the fascinating succession of these principles he very properly omitted their detailed application in institutional methods. A nearer approach to the detailed discussion of applied penology in this country, was presented in the report by E. C. Wines and Theodore Dwight¹ on the *Prisons and Reformatories of the United States and Canada in 1867*. The work has not since been surpassed in comprehensiveness or quality. The material of their report was, however, almost entirely descriptive, with but limited historical background. Nevertheless, there would be little need to add to their contribution, had not almost half a century passed since their report, and had not the most important developments taken place in this latter period. Moreover, their field, like that of *Punishment and Reformation*, was too large—the United States and Canada—to give full details or to cover the entire subject in all its historical phases.

The present contribution attempts to supplement both these works by intensive treatment of a more circumscribed area. For that reason the field of research is confined to correctional institutions and is restricted to New York state, but covers the entire period of time from colonial days to the present. Neither the penal law, nor the code of criminal procedure, nor yet the more general subject

¹ *New York State Assembly Document*, no. 35, 1867.

of police, nor the prevention of crime are dealt with, except only in so far as they relate to the administration of correctional institutions. Those fields are largely covered in the four volumes of descriptive and historical material contained in that valuable series entitled *Correction and Prevention*, published by the Russell Sage Foundation for the International Prison Congress held at Washington, D. C., in 1910. That series emphasized to a greater extent the preventive and sociological aspects and presented some of the better known historical facts of the growth of prison reform.

Neither F. H. Wines, nor Wines and Dwight, attempted to combine the distinctly separate subjects of penology and criminology. The wisdom of maintaining those subjects as things apart became clear at the beginning of the present study as well, and their confusion was studiously avoided by the writer. Only the remotest reference is made to matters of criminology, and then only when of special importance in the development of methods in correctional institutions.

The same care was exercised to avoid propaganda, or recommendations based on the writer's own theories, or prophesies of future development either in the general field of the prevention of crime, or in the specific field of institutional and administrative development. Fundamental changes are bound to come in the entire field of the problem of crime: law, procedure, institutional distribution and management. Any discussion of these subjects has been excluded, for although intimately related to the conduct of correctional institutions, proper treatment would require prohibitive space. The part of the study contained in these pages is limited to New York state. The fact that New York has had the richest and most varied experience in penology of any state in the Union, may render this contribution of some value to students elsewhere in the United States.

CHAPTER I

EARLY PUNISHMENTS AND THE FIRST PRISONS

THE idea of the treatment of the criminal nowadays is inevitably associated with the word "prison." The history of his treatment suggests a history of our prisons. This association of ideas is justified when we go no further back than the beginning of the nineteenth century. But, in order to view the history of prisons and of prison reform in its proper setting, we must briefly survey the methods in vogue in the century and a half preceding.

During that period the treatment of the criminal meant not prison, but hanging and mutilation, whipping, the pillory, the stocks, and other severe corporal punishments.

CAPITAL PUNISHMENT

The death penalty, even as late as 1788,¹ was provided for in some thirteen different offences,² and in the early days of the colony for many more, including such specific offences as: Denying the true God and his attributes, maliciously bearing false witness on purpose to take away a man's life;³ "any Child or Children above sixteen years of age and of

¹ *Laws of the State of New York, 1788*, chap. 37, sec. 11.

² These were as follows: Treason, murder, rape, burglary, feloniously taking goods from church; feloniously breaking into house by day or night thereby putting to fear and dread any person in the house; robbery of persons in their dwelling house; robbery of persons in their dwelling house when inhabitant is put to fear; arson of dwelling house or barn; malicious maiming or wounding; second offence for felonies not here mentioned; "theft in chose in action and also abettor to the above."

³ *Laws of the Colony of New York, 1664*, vol. i, pp. 20-21.

Sufficient understanding (who) shall smite their Natural Father or Mother unless thereunto provoked and forced for self-preservation from death or maiming, at complaint of said father or mother and not otherwise, they being Sufficient witness thereof;¹ adultery of married person with married person; treasonable piracy;² being run-away slaves from the City or County of Albany who are found going or planning to go to Canada and convicted before the Justice of the Peace;³ counterfeiting;⁴ being found in possession of counterfeiting apparatus;⁴ false swearing by a debtor in regard to conditions of release from imprisonment, and the like.

The Mosaic provision, religiously included in the laws⁵ of the Colony, that no man or women shall be put to death without the testimony of two or more witnesses, his own confession or other equivalent circumstances, was largely counterbalanced by the fact that "after four days next after condemnation," the death penalty could be executed forthwith, except by order of the Governor⁶ to the contrary.

Glimpses of a more gentle spirit are caught here and there in occasional laws before the great change of 1796. For example, a law passed in 1788, states in the preamble:

Whereas the judgments directed by the law of England, now in force in this State, in all cases of high treason, and in many cases of petty treason are, so far as they respect the manner of putting the offenders to death, marked by circumstances of savage cruelty, unnecessary for the purposes of public justice

¹ *L. C. N. Y.*, 1664, vol. i, pp. 20-21.

² *L. C. N. Y.*, 1699, vol. i, p. 389, ch. 67.

³ *L. C. N. Y.*, 1745, vol. iii, p. 448, ch. 790 and p. 511, ch. 815.

⁴ *L. C. N. Y.*, 1756, vol. iv, p. 92, ch. 1018.

⁵ *L. C. N. Y.*, 1772, vol. v, p. 418, ch. 1566.

⁶ *L. C. N. Y.*, 1664, vol. i, p. 31.

and manifestly repugnant to that spirit of humanity, which should ever distinguish a free, a civilized and christian people¹

Older methods of execution are therefore abrogated, and provision is made that convicts be merely "hanged by the neck till dead."

CORPORAL PUNISHMENT

For "lesser offences" some form of corporal punishment was generally provided, as representing a milder variety of the same type of punishment achieved through execution. In a sense, therefore, the variety of corporal punishment such as whipping, branding, stocks and pillory, represented the achievements of the community imagination in its search for the same kind of retribution as represented by capital punishment, but without its fatal consequences.

The laws of the Colony of New York for 1664 provided corporal punishment for the following offences among others: for assault of master by servant, corporal punishment "saving life and member"; for burglary or robbery as a first offence, branding on forehead, second offence, branding on forehead and severe whipping; third offence, death; for stealing property of ten shillings or more, whipping or fine. Later laws show the same spirit. Vagrants returning to New York after having been expelled and transported to their domiciles, and thus again becoming public charges in New York, were to receive not more than thirty-one lashes if a man, nor more than twenty-five, if a woman, on the bare back.² Slaves assaulting or striking Jews or Christians were to be punished by imprisonment for not more than fourteen days and corporal punishment saving

¹ *L. S. N. Y.*, 1778, ch. 19, sec. 1.

² *L. C. N. Y.*, 1721, vol. ii, p. 58, ch. 410.

life and limb.¹ Conspiracy of slaves was punishable by whipping;² corporal punishment "saving life and limb" was provided for fraud.³ New laws passed as late as 1787 make further provisions for corporal punishment even for the purpose of "providing more speedy punishment"⁴ that is, infliction of corporal punishment immediately upon conviction by the justice of the peace instead of retention of the defendant for adjudication by the general sessions of the peace.

STOCKS AND PILLORY

Stocks and pillory were extensively used. The laws of the Colony required, in 1664,⁵ the provision of stocks by each town; the following year a penalty of forty shillings was provided for each town failing to erect such stocks.⁶ As late as 1726⁷ we find a general provision empowering justices of the peace of Schenectady to raise an annual sum of fifteen pounds for the building of stocks and pounds. Standing in the pillory on three Court days is provided by the laws of 1664, for forgery. Breaking of the Sabbath is to be visited by being publicly set in stocks for three hours⁸ with the additional provision, for Indians or slaves or servants, of thirteen lashes on the naked back. (The above is an alternate punishment, if the offender is unable to pay a fine of six shillings provided in the first place). Nor were these laws dead letters on the statute book. The provisions

¹ *L. C. N. Y.*, 1730, vol. ii, pp. 679-688, ch. 560.

² *Ibid.*

³ *L. C. N. Y.*, 1762, vol. iv, p. 669, ch. 1196.

⁴ *L. C. N. Y.*, 1787, ch. 65, sec. 10.

⁵ *L. C. N. Y.*, 1664, vol. i, p. 59.

⁶ *L. C. N. Y.*, 1665, vol. i, p. 81.

⁷ *L. C. N. Y.*, 1726, vol. ii, p. 304, ch. 480.

⁸ *L. C. N. Y.*, 1695, vol. i, p. 357, ch. 52.

of the laws were amply carried out; and the wide discretion given the judges by most of the statutes assure some interesting variations. One offender who had stolen a number of cabbages from his neighbor's garden had to stand in the pillory with the cabbages on his head, and was, in addition, banished from the City for five years.¹ Another, on a charge of larceny, was sentenced to ride the wooden horse, an apparatus some twelve feet high with a hard-edged back over which the prisoner's legs were fastened by chains.² A negro woman who had set fire to a house was sentenced to be conveyed "to the place of public execution, there chained to a stock, strangled and then burned." That she had been pardoned was not known to her until after all the preparations had been made in her presence.³ One case is cited of two men convicted of theft, the judgment of the Court being that one of them should die, and that the choice be made by drawing lots.⁴

That the whipping post, pillory and stocks were generously used is indicated by the fact that twelve years after the original construction of these instruments in New York City they had to be rebuilt.⁵

Other punishments were also given, depending more or less upon the ingenuity of the magistrate. A miscellaneous assortment of penalties, as actually imposed, contains a sentence of one man to three years hard labor chained to a wheelbarrow,⁶ which meant working with the Dutch

¹ *New York Weekly Post Boy*, June 3, 1754.

² *Abstracts of Wills on file in the Surrogate's Office, City of New York*; N. Y. Hist. Soc., 1892, vol. ii, p. 192.

³ *Memorial History of the City of New York*, edited by J. G. Wilson, 1892, vol. ii, p. 129.

⁴ *Old New York*, edited by W. W. Pasko, N. Y., 1890, p. 177.

⁵ *Minutes of the Common Council*, vol. ii, p. 244.

⁶ *New York Colonial Manuscript, etc.*, edited by J. R. Brodhead, 1856-83, vol. vi, p. 625.

Company's negroes, cases of branding and whipping combined, and later in the Colonial period even banishment. In 1755¹ "Eleven of the common and the strolling Trulls of the town," after being whipped, "were ordered out of the City and Suburbs, their harbouring with People of more chaste and pure inclinations being found to be of very pernicious consequences." One instance is found of branding and banishment combined.²

The colonists took good care that the provisions of this code should be adequately carried out, for in the very first year of the English period in the Colony, in 1664, a law was passed requiring the erection of stocks, pillories and prisons by every town.³ Our fathers were not ashamed of their methods of punishment, for the gallows in New York City, in 1789, stood in the most public part of town, between the jail and the almshouse, in a gaudily painted Chinese pagoda, with its retinue of the whipping post and stocks nearby.⁴ Records of the same year also give the name of the public whipper, one Joseph Shelby, who received a salary of twenty-five pounds per annum. Incidentally, we are told that there were ten death sentences passed in that year by the Courts of Oyer and Terminer in the City, and that five executions were held on one day, the 23rd of October.

FINES

Probably the most frequent punishment for lesser offenses was a fine, the amount being generally left to the discretion

¹ *New York Weekly Post Boy*, Aug. 11, 1755.

² *Calendar of Historical Manuscripts in the Office of the Secretary of State, Albany, N. Y.*, edited by E. B. O'Callaghan, pt. ii, Albany, 1866, p. 15.

³ *L. C. N. Y.*, 1664, vol. i, p. 59.

⁴ Thomas E. V. Smith's *New York City at the Time of George Washington's Inauguration, 1789*, published by Anson D. F. Randolph Co., New York, 1889.

of the Court. The variety of offenses for which this penalty was prescribed is not in itself interesting. The principal interest lies in the fact that the alternative for a fine, in case of non-payment, was mostly some form of corporal punishment. To judge from what happens in our own day, this must have meant great frequency of corporal punishment, for it is hardly likely that in those days the offender was any more able to pay his fine than he is today, and it is one of the disgraces of our penal law and criminal procedure to this day, that so many men and women must spend countless days in jail for inability to pay the fine imposed. Scores of laws may be found between 1664 and 1796 in which corporal punishment is provided as an alternative for non-payment of fine. Some of the offenses in which this alternative is provided were: Publishing false news,¹ stocks or whipping; theft,² whipping; Sabbath breaking,³ stocks for two hours; cursing,⁴ stocks for three hours or whipping; immorality,⁵ two to four hours in stocks (in case of negro, Indian or other slave, an addition of not more than forty lashes).

IMPRISONMENT

Of imprisonment as a form of punishment, there is but little mention in the early laws. The first reference seems to be in 1664,⁶ where a fine or imprisonment is provided for just one offence: barratry. Another law in 1702 provided imprisonment of one year and a day for forgery or counterfeiting of money; but this law was to be in force for one year "and no longer." It was revived in 1708 for a

¹ *L. C. N. Y.*, 1664, vol. i, p. 45.

² *L. C. N. Y.*, 1664, vol. i, p. 73.

³ *L. C. N. Y.*, 1664, vol. i, p. 173, ch. 1.

⁴ *L. C. N. Y.*, 1685, vol. i, p. 174, ch. 2.

⁵ *L. C. N. Y.*, 1708, vol. i, p. 617, ch. 171.

⁶ *L. C. N. Y.*, 1664, vol. i, p. 17.

period of ten years. In 1730 imprisonment with corporal punishment was provided for slaves assaulting Jew or Christian.¹ A law in 1743² provided a fine or imprisonment for firing the woods of Suffolk or Dutchess counties or of Livingston Manor, the imprisonment to be three months in case the fine was not paid. In 1773,³ imprisonment was made an alternative for a fine for accessories to felony. Finally, in 1788, a law⁴ defining disorderly conduct provided imprisonment therefor "at hard labor" in a Bridewell or House of Correction, or, lacking such, in a "gaol." This seems the first general law designating prisons as places for punishment at hard labor, but it applies only to lesser offenses. However, while it played a very unimportant rôle as a method of punishment, imprisonment was regularly used for the detention of offenders charged with crime and awaiting trial, and for the safe-keeping of debtors and witnesses. It is for these purposes almost exclusively that imprisonment was employed during the colonial period, and up to the end of the eighteenth century.

IMPRISONMENT FOR DEBT

There seems to have been in this period the greatest solicitude for the interests of the creditor. Scores of laws are to be found on the statute books of the Colony dealing with technical details in the matter of the imprisonment of debtors and protection of creditors. From time to time we also find laws apparently intended to protect the debtor. In 1664 it is provided that "no man shall be longer in prison for debt or fine than he can find sureties, etc.", and that no

¹ *L. N. C. Y.*, 1730, vol. ii, pp. 679-688, ch. 566.

² *L. C. N. Y.*, 1743, vol. iii, p. 318, ch. 750.

³ *L. C. N. Y.*, 1773, vol. v, p. 543, ch. 1611.

⁴ *Laws of the State of New York*, 1788, ch. 31.

person shall be arrested for any debt or fine until the time when it shall become due is expired. In 1684¹ it was provided that persons under twenty-one years were not to be arrested in civil actions unless the debt for which the suit was instituted had been contracted for diet or apparel. One law in 1664,² provided an alternative by which the debtor was required, if so ordered by the Court, to satisfy his debt by service. Should the creditors insist, this debt might be interpreted to include also the charges of his arrest and imprisonment. In most cases the debtors were required by tradition to maintain themselves in prison at their own expense, although the specific legal provisions related only to such persons "of known estates, who, to beget strife, refuse the payment of their debts."

However, imprisonment for any purpose did not seem to be a favored process with our fathers of the eighteenth century. We find in the course of that century a growing number of laws providing for release from imprisonment both of debtors and of criminal offenders. In the case of debtors an aspect was given to the laws which might make them appear to have arisen from sympathy for the poor debtor. The laws in relation to the second group, however, show more honestly that the objection to imprisonment was the expense of maintenance. If a more generous attitude toward the debtor also played into the plan, so much the better. Beginning with 1730,³ a succession of laws provided means by which debtors might be released from imprisonment, and in the end practically abolished imprisonment for debt. It was provided in 1730,³ that "whereas many persons are rendered incapable of paying their whole debts

¹ *L. C. N. Y.*, 1684, vol. i, p. 160, ch. 19.

² *L. C. N. Y.*, 1664, vol. i, p. 14.

³ *L. C. N. Y.*, 1730, vol. ii, p. 669, ch. 558.

by losses and other Misfortunes, and though they are willing to make utmost satisfaction they can, are nevertheless detained in prison by their creditors" they were to be released on certain conditions. Other provisions of law in the same year¹ made further concessions in favor of debtors. So, for example, those who had been in prison for three months, or for a debt of not more than one hundred pounds, if willing to deliver all their effects towards satisfaction of the debt, were to be released from prison, and were not again to be imprisoned for the same debt. For those poor persons imprisoned for "a long time for very Small Sums of Money to the utter ruin of their families without any real Benefit of the Creditors," the further advantage of a simplified procedure of discharge was provided. Similar provisions occurred again and again, in 1733, 1734, 1750 and 1753, each law a little more generous than the last. A somewhat surprising turn was taken by a law in 1772,² declared in the preamble to be "in imitation of the Wise and Benevolent Example of the British parliament for the relief of debtors who are not only miserable to themselves and families, but also useless to the community, the said debtors being destitute of the necessaries of life;" it was provided in this law that creditors who insisted on detaining such debtors were to pay them four shillings per week; otherwise the debtors were to be released. From time to time laws were passed for the release of individual debtors singly, or in groups. In 1773,³ some twenty were released by one Act. Section 9 of Chapter 22 of the Laws of 1786⁴ reads like a wholesale jail delivery for debtors owing not more than fifteen pounds.

¹ *L. C. N. Y.*, 1730, vol. ii, pp. 669-674, ch. 558.

² *L. C. N. Y.*, 1772, vol. v, pp. 418-421, ch. 1566.

³ *L. C. N. Y.*, 1773, vol. v, p. 596, ch. 1637.

⁴ *Laws of the State of New York*, 1786, ch. 22.

Finally, in 1789,¹ definite classification was made of debtors providing *inter alia* the release at the end of thirty days without liability for rearrest for the same debt of those owing not more than ten pounds. A law in 1819² appears to be the first actually abolishing imprisonment for debt in certain cases. It was followed in 1831 by the Stillwell Act, passed after numerous memorials had been presented to the Legislature, and abolishing all imprisonment for debt on contract if innocent of fraud. But even that law left imprisonment for actions in tort and contempt; for enforcing civil remedies, fines or penalties; in cases of promise to marry, and to assist in the collection of money by public officers.

It is no part of our task to give a history of imprisonment for debt or the treatment of debtors before the law. The importance of this subject for us is confined simply to showing that the bulk of legislation regarding *imprisonment* before the nineteenth century was related to civil affairs.

IMPRISONMENT FOR TRIAL

The only other important purpose of imprisonment was the safekeeping of the offender charged with crime, for the next session of the Court. This might mean a period extending to one year, and sometimes even longer. After a while this kind of imprisonment in which the entire cost of maintenance devolved upon the community began to be too expensive, and in 1732,³ the first law appears for the reduction of the expense by abolishing, so far as possible, imprisonment for this purpose. The preamble of the law of 1732 refers to tramps and other "transients" from colony to colony who commit offences en route, have to be

¹ *Laws of the State of New York*, 1789, ch. 24.

² *Laws of New York*, 1819, ch. 101.

³ *L. C. N. Y.*, 1732, vol. ii, p. 745, ch. 578; and a similar law in 1744, vol. iii, p. 379, ch. 767.

kept and maintained in the County Jails (mentioning particularly, Westchester, Queens, Kings, Richmond, Orange, Ulster and Dutchess counties) until the next general sessions of the Court, their families meanwhile becoming a burden "while they [the tramps] often escape, making the expense of their maintenance futile, and, moreover, causing further expense for repair of the jail." The law provides that in such cases, in the several counties named, if the evidence is under the degree of grand larceny, the justice of the peace may, within forty-eight hours of the commitment to jail of such person, unless the prisoner can offer bail, try him, and sentence him, if found guilty, to corporal punishment "not extending to life or member." The law of 1744 repeats the same general provisions, but makes the corporal punishment convertible into fine. Encouraged by the success of the law of 1732 and finding it not only useful and beneficial ". . . but also an Ease to the Inhabitants of the Said Counties, from the Great Burthen and Expense They have been at from time to time for the Support and Maintenance of such Idle Wandering vagrants . . ." the legislature of 1736¹ extended the provisions of that law to include Albany and Suffolk Counties as well. A further law in 1787² enacted similar provisions in the same spirit with the additional alternative of punishment by hard labor for a period not exceeding six months.

We may be prepared, therefore, to find prisons up to practically the end of the eighteenth century, institutions not for punishment, and therefore not institutions in the sense in which we study them here, but merely places of detention for those awaiting trial or for debtors. Their history, therefore, is comparatively simple. It is a story of

¹*L. C. N. Y.*, 1736, vol. ii, p. 933, ch. 643.

²*L. C. N. Y.*, 1787, ch. 65.

the confinement of debtors and of offenders against the criminal law, increasing in number with the general increase of the population, and gradually outgrowing the capacity of the jails; there arise various degrees of congestion, which, sooner or later, lead to enlargements of jails and changes of location. When these changes of location and enlargement have been told, the whole history of imprisonment for this period has been covered. In no other sense is there any change or development.

THE FIRST PRISONS IN NEW YORK

The Dutch colonists, we are told, had two prisons in New Amsterdam, one in the fort for the Company's prisoners, and one in the City Hall for burgher-prisoners. The Records of New Amsterdam¹ contain a list of rules and regulations drawn up for the guidance of the jailer in 1658 by the burghomaster who appointed him.

This prison is said to have been in the *Stadt Huys* at the Head of Coenties Slip, and to have been erected in 1642. The same building served also as City Hall, court and tavern. The space set apart for the prisoners was one small rear room on the first floor on the opposite side from where the whipping post and stocks stood.² The first jail of the English Colony was in the house of Brinckerhoff at Coenties Slip and Dock Street.³ Apparently this is the same prison that was used by the Dutch authorities, and continued to be used until 1699, when a committee was appointed by the

¹ *Records of New Amsterdam*, Berthold Fernow, ed., 7 vols., Knickerbocker Press, 1897, vol. ii, pp. 294-6.

² Quoted from the Report of the Commissioner of Correction, City of New York, October 20th, 1915, who gives as the main source of information an article on old prisons and punishments in *Historic New York*.

³ *Olden Time in New York by those who knew*, T. R. De Forest, N. Y., 1833, p. 38.

Common Council to inspect the "Block-house by the Governor's Garden" and see whether it might be fitted for a prison.¹ In 1699 the prison was removed to the new City Hall. The basement of the new quarters was reserved for ordinary offenders, the sub-basement for dangerous characters and the attic for debtors.² From this time on until 1796, there was practically no change in the functions of the prison. From time to time changes were made in arrangement and accommodations and the jail was moved from place to place. It continued to serve in its various departments, for debtors, witnesses and those charged with criminal offenses.

Apparently, a new four-story prison was erected in 1756³ in the northeastern part of the present City Hall Park, and in 1759 an act was passed removing the prisoners from the City Hall to the new jail.⁴ This law provided a limited time during which the removal was to be made, and after which the City Hall was no longer to be used as a prison. This structure continued to be the only prison for the City and County of New York until 1775. In that year a bridewell was built according to plans furnished by Theophilus Hardenbrook, and the old building was thereafter used, in part only, as a jail for debtors. The bridewell, built in 1775, continued to serve until 1838, when it was torn down and some of the stones used for building the new "Tombs." The other building, or debtor's jail (built in 1756, and at that time referred to as the "new gaol"), after serving as

¹ *Min. C. C.*, vol. ii, p. 92.

² Quoted from the Report of the Commissioner of Correction, City of New York, October 20th, 1915, who gives as the main source of information an article on old prisons and punishments in *Historic New York*.

³ *Ibid.*

⁴ *L. C. N. Y.*, 1759, vol. iv, p. 355, ch. 1088.

debtor's jail up to 1841, was converted into the Hall of Records for the City of New York. At that time the debtors were removed to the Eldridge Street prison, formerly used as a watch-house.

Beyond a doubt none of these changes was made or new buildings built except when conditions had become wellnigh insufferable. In 1725, Sheriff Dugdale reports that the jail (this is the one built in 1699 as City Hall and used partly for jail purposes) was so crowded that debtors had to be lodged with persons committed for capital offenses, cases of mortal or contagious sickness could not be removed and the sexes were allowed to mingle.¹ Conditions were even worse by 1748, when sanitary conditions had become a public nuisance and an irritation even to the casual passer-by.²

Because of the comparatively shorter periods spent in jail by offenders awaiting trial or sentence, and of the fact that, on the whole, their cases appealed less to public sympathy, we hear much more during this period about the pitiful conditions of the debtors than of other prisoners. The community did not feel itself obligated to maintain debtors at public expense, because of the peculiar private relations between the debtor and the creditor. Debtors had, therefore, to rely a good deal upon private charity. We are told that in the first debtors' prison in New York City, in the City Hall, the inmates would suspend a bag or old shoe on a pole from their attic windows to receive alms of passers-by.³ From time to time, it seems, they were obliged to make petitions to the City for donations to see them through their period of incarceration.⁴ Late in the eighteenth century a Society was organized "for the Aid of

¹ *Min. C. C.*, vol. iii, p. 370.

² *New York Weekly Mercury*, March 13, 1748.

³ *Min. C. C.*, vol. ii, p. 92.

⁴ *Calendar of Hist'l Doc., etc.*, p. 803.

Distressed Debtors" (organized January 28th, 1787), which supplemented to the extent of eight pence a day per person¹ the *per diem* fee received by the keeper (who was appointed by virtue of being the lowest bidder).

Two other types of prisons complete the very meagre prison history of our colonial period; in fact, the period ending in 1797. These were the workhouse and the county jails. The workhouse seems to have been an institution modeled in principle largely on the workhouses under the English Poor Law. It is difficult to distinguish to what extent it did in fact function as a workhouse, and to what extent only as a poorhouse. Its origin was certainly in the conditions of poverty rather than those of crime, but at the point where the two intersect, namely, in the form of beggars and vagrants. To all intents and purposes, this workhouse was more of a poorhouse with a certain amount of force behind it. It did eventually, in the first quarter of the nineteenth century, develop into the City Penitentiary.

New York City during the colonial period was not only the most important but in a sense the only corporation of any consequence in the Colony. In referring, therefore, to the few prisons in existence there, and to their functions, we may feel that we have done justice to the whole question of imprisonment prior to 1796. It is true that there were county jails also in existence during that period, but these were few in number, and their functions differed in no way from those of the bridewell and debtors' prison of New York City. They were to confine prisoners awaiting the session of the court, or debtors unable to pay their debts. The number of inmates must have been small when compared with New York City, and they were no more prisons for

¹ Thomas E. V. Smith's *New York City at the Time of George Washington's Inauguration, 1789*, published by Anson D. F. Randolph Co., New York, 1889.

punishment in our present sense than were the bridewell or the debtors' prison of New York City.

We approach, therefore, the end of the eighteenth century with a small number of county jails and bridewells serving a limited purpose and only to a slight degree meant for punishment. Most punishment took the form of whipping, fines, stocks and pillory, and execution. The institutional history of prisons for this period is of little importance and has little bearing upon the development of the prison system as we know it. Inasmuch as they were called prisons, and in so far as they were constructed with a view to forcibly detaining prisoners against their will, they belong to the same family; but outside of that, the family resemblance vanishes, and so we may begin the History of Prisons in New York State practically with the Legislative Act of 1796.

CHAPTER II

DIVERSIFICATION OF CORRECTIONAL INSTITUTIONS

CAUSES LEADING TO DIVERSIFICATION

THE brief history of the diversification of institutions combined in this chapter shows two important causes leading to the establishment of new institutions or new types of institutions, one theoretical, the other, administrative. The theoretical causes account for the more important and more fundamental changes, and impress upon us the importance of theoretical discussions, which, in our desire to be "practical" we are so apt to disdain. The first great change, the law of 1796, was the result of theory, the result of a new and milder conception of the relation of society to the criminal, and led, in practice, to the establishment of the State Prison. The first juvenile reformatory, that is, the House of Refuge, the first private reformatory for women, the Magdalen Society, the Elmira Reformatory, the state reformatories for women, all were due to theoretical considerations. It was only the minor changes that we find based on administrative and so-called "practical" reasons. The establishment of the second State prison at Auburn was due to the overcrowding and generally bad administrative conditions in the old Greenwich Prison. There simply presented itself the necessity of obtaining more facilities. The "Auburn system," however, is due neither to theoretical discussions, nor to conscious administrative changes alone, but to a mixture of the trial and error method and of pure accident. Once introduced, the Auburn system became a

theory and its extension was due mainly to theoretic propaganda. The administrative difficulties with the women inmates, who were always a thorn in the side of prison executives, did not in the whole period from 1796 to 1887 succeed in bringing about the recognition of a clear principle of differential treatment of women offenders; and changes effected by individuals such as Mrs. Farnham at Sing Sing were not embraced and perpetuated by the official representatives of the State who were responsible for its policies. It was Mrs. Lowell's sociological insight and her agitation on sociological grounds that obtained the women's reformatories in the eighties.

The actual diversification proceeded successively along lines, first of sex (this separation seems to have been in force from the very beginning of the colonial period), then of seriousness of offence, then age, and to some extent character or type of inmate. The sex differentiation was maintained throughout, but became distinct and important only with the establishment of the women's reformatory, which created "a place in the sun" for the "woman offender." For the rest, the creation of new institutions seems to be a more or less unconscious groping towards classification for the purpose of differentiated treatment, and all of it is based more or less on the growth of the new attitude towards the offender,—one of greater leniency, greater altruism, greater sense of social responsibility, and greater recognition of the potentialities of scientific analysis and treatment.

The law of 1796 establishing the first State Prison in New York ushers in the correctional treatment of the criminal by imprisonment. Had that law merely created another and new institution, it would have represented no such sudden and profoundly important change. But in addition to creating this new institution, it also made sweeping

changes in the penal law, wiping out capital punishment for all offences except treason and murder (and aiding and abetting the same); it provided life-imprisonment for all other offences theretofore punishable by death (except stealing from the Church); and life imprisonment for all second offences in case of felonies punishable, according to the same act, by not more than fourteen years. A considerable number of offences were made punishable by imprisonment for a term not exceeding fourteen years. A number of other provisions enriched the list of offences previously punishable by whipping but now by imprisonment in the State Prison.

The smallest offence for which a sentence to State Prison was permissible was petty larceny for one year for a first offence, and three years for a second offence. Commitments to county jails were authorized for any offence in the discretion of the Court, the term not to exceed six months.

THE FIRST STATE PRISON 1797

The State Prison in Greenwich Village, New York City, provided by the Act of 1796 was not ready until 1797. A make-shift proviso in the law permitted commitment in the meanwhile to the City Bridewell in New York City and to the county jails elsewhere. As a result, the county jails in the various counties of the State were used during this period as substitutes for the State Prison. That meant the extension of the use of the county jails, as well as a general change in the penal law and the creation of a new institution.

For a considerable period the public conscience gave no manifestation of a greater discrimination of prison evils than that evidenced in the recognition of increasingly unsatisfactory physical and moral conditions in the new State Prison. But before this recognition took the concrete form of the establishment of a second State Prison, the leaven

of differentiation had already begun to work among philanthropic individuals and an attempt is recorded to organize a Magdalen Home about the year 1811. This movement did not crystallize in the establishment of an institution until later in the "thirties." It is very likely, however, that it received its impulse, partly at least, from interest in the growing number of women inmates and their condition in the prisons of New York City and in the State Prison.

AUBURN

The second State Prison at Auburn was authorized in 1816 and opened in 1819. It meant a new departure in prison methods, but brought no development in the understanding of the offender, or any profound change in the principles of his treatment. The first really great change, possibly the greatest in the entire history of the treatment of the criminal, was the one inaugurated about this same year 1818 or 1819, when the Society for the Prevention of Pauperism in the City of New York was organized. This association after thorough investigation concluded that the greatest service it could render for the preventive work indicated in its name would be the erection of an institution for the reformation of juvenile delinquents. The Society found a great deal of vagrancy and vagabondage among children, especially young boys, and discovered that a good many of these vagrant children had previously been imprisoned. The purposes of the projected institution therefore were the reclamation of those who had already been in prison, but who were still of tender age, and the provision of a new institution to act as a substitute for the prison where children sentenced to imprisonment might be confined separately from adults. The establishment for this purpose of the House of Refuge by the Society for the Reformation of Juvenile Delinquents (which name the organization later

assumed) marks the immensely important step of the first separation in penal institutions of this State of the juvenile offender from the adult prisoners.

HOUSE OF REFUGE

The institution early assumed the function of parents in relation to the children committed to it. It instituted the practice of binding them out as apprentices and retained control over them up to their majority. At this institution perhaps more than at any other, we find the clearest and earliest example in this country of the disappearance of the rigid differentiation between the neglected and the delinquent child.

MAGDALEN HOME

The next differentiation of institutional type comes with the establishment of the New York Magdalen Society which opened its home for fallen women in 1833. It was the first sustained attempt to apply organized philanthropic efforts to the rescue and reformation of fallen women. Theretofore they had been simply punished as transgressors of the law. Prostitution had been a legal offence punishable by imprisonment or fine. Prostitutes were offenders against the law. To deal with them in a non-legal way was something new, and it was the beginning of the more general recognition of the existence of a problem, of the *woman offender*. It was not, we must admit, conceived of as a social problem at the time, but more as a quasi-religious one: the problem of reclaiming lost sheep for the fold. This concept expressed itself in the means adopted for their reclamation, which was to be through religious ministrations of kindly women. As secondary principles of reclamation, following in importance the spiritual and religious, there were admitted: employment and trade instruction, and, to some extent,

physical rehabilitation. But while the spirit and impulse responsible for this new adventure in correction were based upon theoretical considerations, the actual start was made as a result of the deplorable conditions found among the women in the New York City Penitentiary.

No further important step in the treatment of women was taken until the establishment of the first reformatory at Hudson in 1887. The periodical removal of women prisoners from State Prison to penitentiary and from penitentiary to State Prison had no theoretical significance.

COUNTY PENITENTIARY

The next important idea that crystallized in a new kind of institution gave us county penitentiaries. In speaking thus of county penitentiaries, we do not include the New York Penitentiary; for that institution, from colonial times, was part of the general development of the prison system of New York City. The county penitentiary proper owes its origin to both practical and theoretical considerations. In practice, the county jails, especially in the more populous counties such as Albany, Monroe, Erie and Onondaga, had become too overcrowded and unwieldy. The logical solution was to build larger institutions and to separate the functions of the county jail by sending to these newer and bigger institutions prisoners serving sentence, and retaining the county jails as houses of detention only. The establishment of the penitentiaries constituted this solution. The first penitentiary was opened in 1846. About the same time we find numerous suggestions, especially in the reports of the Prison Association, for the establishment in various parts of the State, of "district workhouses" which would receive the convicted prisoners usually sent to county jails, for their own and the State's profit, and whose withdrawal from the county jails would render the latter more acceptable

places of detention.¹ This demand for State district work-houses probably contributed some of the theoretical impulse for the organization of the county penitentiaries; their establishment in Albany, Monroe, Erie and Onondaga counties sidetracked the general plan. The County penitentiaries, by taking the *workable* convicts of their own Counties and by agreeing to receive the same kind of prisoners from other counties, seemed to all intents and purposes to assume the character of the suggested state district workhouse. The fact, furthermore, that these penitentiaries started out, and for a considerable period maintained themselves, as institutions of a very much higher calibre than the State Prisons, helped to perpetuate them, and was responsible for the gradual abandonment of the "district workhouse" idea.

JUVENILE ASYLUMS

The establishment of the juvenile asylum in 1853, coming as it did almost thirty years after the opening of the House of Refuge, and some seven years after the Western House of Refuge, had little if any significance for the general course of the development of public correctional institutions. Neither had the establishment of the Western House of Refuge in Rochester, which was to be a counterpart of the New York House of Refuge, any particular significance except that of supplying additional capacity and greater convenience for the proper care of such children in the western part of the State.

ASYLUM FOR THE INSANE, AUBURN, 1859.

The next step of importance was the opening of the asylum for insane criminals at Auburn, in 1859. This preceded the removal of the insane from the county alms-

¹ See *Prison Association Annual Report 1847-8*, p. 48, extract from L. Pilsbury's letter on "County Penitentiaries."

houses and came before the acceptance of the fundamental theory that the care and treatment of the insane was a state duty. It was merely a more sensible and more efficient way of dealing with insane prisoners in the state prisons, to transfer them from the general institutions to a separate one. For some time in the early part of the century, prisoners decidedly insane had been transferred to civil hospitals such as Bloomingdale's and later to the Utica Hospital. The opening of the institution at Auburn was a benefit not only to the insane patients but also to the management of the state prisons.

REFORMATORIES

With the beginning of the third quarter of the nineteenth century, we enter into the most important period in the history of correctional institutions in this state. The idea of reformation had begun to seep into the conscious penology of the state at the beginning of the nineteenth century. The regime of the House of Refuge was definitely based on the idea of reformation. The same principle underlay in somewhat different form the organization of the Magdalen Society. Towards the end of the Civil War, the expectation of a great increase in criminality after the war intensified the growing consciousness that special provision would have to be made for younger offenders. And it was felt that the idea of reformation would have to become a good deal more than lip-service. The Elmira Reformatory, created in 1870 and opened in 1876, is the tangible result of their thoughts and of the resultant agitation.

ELMIRA REFORMATORY

The important points about this institution at the time of its establishment may be briefly summed up as follows: *First*, its name: New York State Reformatory; *Second* the

restriction of eligibility for admission to first offenders (felons only, not misdemeanants); *Third*, the age limitation: sixteen to thirty, distinctly recognizing the pedagogical principle that the greatest efforts should be concentrated upon the more impressionable age during which a given amount of training would bear comparatively greater fruit; *Fourth*, the connotation of the term reformation, which meant from the very first, in this institution, not a program of general religious and moral exhortation, but specific and painstaking instruction, academic and industrial, with a system of discipline based, so far as possible, on scientific psychological principles; *Fifth*, the indeterminate sentence in a surprisingly generous sense, admitted for the first time into the penal law of the State and, for that matter, of the country; ¹ *Sixth*, with the Elmira Reformatory the elaboration of a careful and complicated technique of treatment for the purpose of reformation, began to build up a penology of concrete fact instead of general theory. Then, too, with this institution for the first time, the state extended its paternal attitude, which seemed natural for children in the House of Refuge, to adults at the Reformatory; this was to be followed later, though perhaps only imperceptibly, by the further extension of that attitude to all offenders. They are all henceforth to be more and more *wards of the state*, and the latter is to be more and more *in loco parentis* to all, juvenile or adult.

It was not so difficult after the creation of Elmira to effect the adoption of the reformatory idea in relation to women, and one might easily assume that the establishment in 1887

¹ Of course, the sentences to the House of Refuge of children who were to remain under control of the institution till their majority, were in fact indeterminate sentences, but they did not generally come to be so considered because of the peculiar relation between the institution and its child wards, towards whom it stood *in loco parentis*.

of the first women's reformatory in New York State at Hudson was the natural extension of this reformatory idea to include women. As a matter of fact, however, the history of that institution shows that the birth of the women's reformatory was the result of an entirely different approach to the problem.

FIRST WOMEN'S REFORMATORY AT HUDSON

Mrs. Josephine Shaw Lowell investigating county institutions in the "Seventies" found great numbers of women in jails, penitentiaries and almshouses, all of much the same type, arriving at these various institutions for much the same reasons, and presenting a very serious eugenic danger to Society. She conceived of these women as a menace to the community and she urged some means of combating that menace. It was not so much the idea of reforming the individual woman with whom she had come in contact that urged Mrs. Lowell to demand public care for them, as it was the sense of danger to the community from these uncontrolled irresponsible women who propagated their kind faster than did other women. She conceived of these women not as criminals, but as a malignant tumor on the social body—themselves a social product. We receive a definite sense, from her ten years' agitation leading to the establishment of the Hudson Reformatory, of a "eugenic" movement rather than a "moral" one. However, her ideal never became realized. The women's reformatories turned out in the end to be institutions of a very different type.

With this group of new institutions, we have practically arrived at the present stage, so far as actual institutional differentiation goes. Not that we have reached the stage of final development, but we have failed as yet to carry out the rest of the program based on our present-day recognition of the needs of the community. Were our present theories

to find a responsive public treasury, there would follow the organization of a considerable number of new types of institutions and a fundamental reorganization of the present institutions. We might then have a reformatory for misdemeanants, which was established by law in 1912,¹ but is not yet realized. We would have a state industrial farm colony for tramps and vagrants, established by law in 1911,² but no nearer realization than the reformatory for misdemeanants. We would have custodial asylums for feeble-minded delinquents, both male and female. We would have state inebriate farms and hospitals. Most important of all, we would have a unified and centralized state system with all its parts logically coördinated in a scientific system.

PROBATION AND CHILDREN'S COURTS

Two great changes, both non-institutional, have taken place in the treatment of the criminal in this State since the establishment of the last new type of institution. These two changes are the introduction and legalization of probation, in 1901, and the establishment of children's courts in 1900. It is proper that both these should be considered as integral parts of the history of the State's treatment of the criminal; furthermore, they properly belong in the institutional history, for they largely take the place of institutions, and have to a considerable extent made the quantitative increase of institutional capacity unnecessary. They represent the extra-mural as distinguished from the intra-mural treatment of convicted offenders against the law. Probation, so far as its technical relation to criminal procedure is concerned, is to all intents and purposes a counterpart of prison; it is in that sense a punishment, but without the evils of imprisonment and with some definite constructive advantages. The child-

¹ *Laws of 1912*, ch. 502.

² Became a law July 28th, 1911.

ren's court, while it constitutes strictly speaking a change in criminal procedure only, has resulted in rendering the court to a large extent a substitute, in children's cases, for reformatory institutions.

During all this time the county jail has continued to maintain practically the full complement of its functions, no matter how many new types of institutions, no matter how many differentiations of new types of offenders were discovered and provided for. The perennial county jail with its perennial evils has remained with us to this day.

NOTE.—In the original manuscript there followed at this point ten chapters giving, in some detail, the histories of the establishment and development of penal and reformatory institutions in New York State in their chronological sequence, as follows: New York City institutions, county jails, state prisons, county penitentiaries, juvenile reformatories, private reformatories for delinquent women, reformatories for adult males, state reformatories for women, special institutions, and probation and children's courts.

CHAPTER III

METHODS IN CORRECTIONAL INSTITUTIONS

THE history of correctional institutions in New York shows principally a quantitative increase in the administrative problem. The most striking single characteristic of that history is the increase in number and size of institutions and, therefore, in the absolute size of the prison problem in the State. True, the increase of institutional provisions has been accompanied by a certain differentiation along lines of sex, age, certain technical definitions, and an increasing recognition of group types. If there has been a real development in the field of penology, it must be sought, however, not so much in this multiplication of institutional types or absolute increase in capacity, but more in the workings of institutional methods. We may speak of development despite the fact that there is no straight line or consistent curve of progress traceable. There have been improvements and retrogressions, progress and reaction, innovations and neglect, succeeding upon each other, without any rhyme or reason, dependent largely upon the fortuitous succession of executives, managing authorities, or unforeseen and sudden public interest. Development of penological methods should be thought of as a zigzag line, the direction of any part of which seems to have no relation to any other part, but which, nevertheless, regarded as a whole, does seem to have a definite direction. The variations in methods are due perhaps more to changes in the administrative personnel of institutions than to any other single factor. We know that men

of high calibre and progressive tendencies as well as their opposites have held executive positions in correctional institutions from the very beginning. But the scale of interpretation of progress has itself risen, so that what was considered progress in 1800 may be out of date in 1900, and a progressive man of this century is bound to make more absolute advance than his kindred predecessor. On the other hand, the reactionary of today can hardly hold so far back as did his prototype of a century ago. The general theoretical basis of social economy and of psychology has changed sufficiently to have taken the whole human mass along with it, its progressives and reactionaries included. *A priori*, therefore, we are entitled to expect real "development" in institutional methods in the last one hundred-odd years. The facts collated in the following chapters are representative enough and show in most categories of prison work sufficient advance of standards in the period of time examined to justify the assertion that there has been *progress* or *development*, at least on the basis of our present-day theories.

A few leading lines of change may here be briefly mentioned as probably characteristic in a large measure of all the methodological changes described below, though rarely perceptible without a broad view of the field. The whole social attitude towards crime, and particularly towards the institutional inmate, has changed. We would not think of including in our laws, if we were to draft them at this date, that the convict should receive clothing and food "of the coarsest kind." We should not now express the fear that what we provided for the wards of the State was not sufficiently inferior to the standards of the normal member of the working masses. We should, on the contrary, be more likely to insist that the clothing be sufficient, varied for the different seasons of the year, of neat and presentable appear-

ance making for self-respect, and generous enough to allow for a variation between work days and Sundays. We should probably specify that special diet be provided for all those requiring it, in prisons, as in hospitals or sanitaria. We should more likely censure trade instruction and industrial training in institutions for being inadequate, rather than—as was the case in the early years of the nineteenth century—for making their “graduates” too skilled in their respective trades and too serious competitors, when discharged, of their fellow workmen on the outside. In our prison construction, while still insisting upon security, we pay more attention to the ordinary human comforts and to sanitary adequacy of the physical plant.

We do not emphasize so much that the prison or reformatory be self-supporting; and still less do we insist upon its being a profitable investment for the state. Yet both these ideas were among the foremost in the earlier years of prison history. We should not think now of exploiting our prisoners for mere financial gain, and we do not find sufficient enthusiasm to make the industrial conduct of our institutions even normally efficient. We do not, of course, look with disfavor upon financial advantages from the work of institutions and we do talk of efficiency; but our interpretation of efficiency relates more to the transparency of administrative methods, records, and standards than to the increase of output. Should we be asked what we think of as the best sign of efficiency in an institution, our answer would be somewhat as follows: When every activity of the institution is duly recorded and is properly related to every other activity; when officers are appointed with regard to their qualifications and inmates are distributed in such a way as to enable them to get the best training out of their prison assignment; when the administrator knows what is going on at any time, has a complete outline or program for his work

and is bending all the functions of his institution towards the attainment of his program. In examining the institutional bookkeeping from the standpoint of efficiency, we should state our conclusions not so much in terms of profit and loss as in clarity of representation of the activities prosecuted.

Decidedly, our standards of judging the humanitarian nature of the treatment accorded to the inmates are higher than those we should have set up a hundred years ago or even fifty or twenty-five years ago. We insist upon reducing the difference in the living conditions between those outside and inmates inside of institutions. We do not concede a necessary correlation between imprisonment and suffering, between institutional life and definite hardship. We do not admit the loss of human dignity as properly implicit in incarceration. We insist upon the maintenance and even development of the self-respect of the inmate in a way which would have been incomprehensible a few generations ago—if we are to judge from the meagre records available.

We certainly conceive of the individualization of the treatment of the prisoner in a vastly different sense than did the men in the early years of the history of prisons. Much of the classical principle that the punishment must fit the crime is gone. That principle itself was at the time to a certain extent an advance, for it meant a reduction of the unlimited power of the judge and a certain assurance of individual rights and liberties. It meant, however, in the course of time, ossification. In this day our momentum in the direction of real individualization, in the sense of elaborate and comprehensive study of personal histories such as are found for example in Healy's "Individual Delinquent", has assumed such proportions that we are apt to revert to the "classical" standards. Here again there has been definite advance, development.

The mystery and secretiveness about prisons under the

cloak of which many cruelties were committed and unreasonable and obsolete methods perpetuated have also been largely dispersed. This means that institutional methods are subject to more extensive public scrutiny, to fuller and more varied criticism; and it means that the time-honored traditions in prison methods will have to justify themselves or gradually be scrapped. While not in itself a tangible advance, this means a clearing of the ground for the rationalization of institutional methods. We have travelled along the path which leads away from automatism. In the redefinition of efficiency, in the more intense application of individualized treatment, in the public criticism of institutional methods, in the loss of traditional faith in the various "patented" prison systems, we are discarding our faith in automatic treatment, that is, the application of formal means to undifferentiated masses.

But more than all, the entire change of methodology in most of its phases may be described perhaps as a reluctant and slow, but unswerving progress in the development of institutional methods along the lines described by the growth of the science of pedagogy. An institution, whether for adults or children, has to all intents and purposes the same problems in administration, as a school teacher or principal. Whether we consider the problem of discipline itself—the grand bugaboo of executives, or the management of the industries, or trade training, or the attitude towards the staff, or any other feature of the administration of correctional institutions that depends upon the relation between a functional superior and a subordinate mass—no matter what aspect of the institution we examine within these limits, it is clear that the determining principles are those within the realm of pedagogy. Control of the staff, discipline of the mass, industrial output, financial profit, all these matters inasmuch as they depend upon the human contact, are ultimately re-

ducible to simple principles of pedagogy. In so far as we may trace a real progress in institutional methods, we shall find in the road we have traveled a reflection of pedagogical advance. This will probably become clearer as we proceed to discuss the various institutional functions contained in the following chapters. Reference to a few principles involved may, however, be helpful. In discipline we have gradually, if slowly, arrived at the recognition that greater results can be attained by coöperation and kindness than by repression or by insisting that the superiority and dignity of the source of authority be recognized. In prisons as in schools we have seen, that to arouse the antagonism and ill-will of the group or of its members is fatal to efficient work and co-operation, whereas, arousing their interest and good will is a certain means for attaining success. This principle applies even to the prevention of escapes. We have found that for the purposes of greater productiveness in the industrial departments of prisons it is essential to assign prisoners to the kind of work suited to their temperament, likely to arouse their interest and to be of use to them after their discharge. In trade instruction we have found that the application of standardized methods can save much time ordinarily spent in the slow processes of unsystematized apprenticeship.

The modern interpretation of *mens sana in corpore sano* with its application of specific correctives, has meant the improvement of discipline, of labor, and of institutional efficiency, as well as the improvement of institutional health. In brief, we may define the direction and extent of real development in institutional methods as coincident with progress in pedagogy and to the extent in which this pedagogical progress was accepted and utilized.

It may be difficult in the following chapters to find these parallelisms clear and outstanding. And certainly the parallelism is not sufficiently complete and comprehensive to allow

its uncritical acceptance in all phases. Perhaps, too, it is not the most happy comparison to make, but it seems justified for two reasons: first, because the principles of pedagogy have been largely parallel in their development with the public attitude towards social institutions in general, and secondly, because this comparison seems most fully and adequately to describe a process which, whether it bears any causal relationship to pedagogy or not, certainly exhibits similarity to its progress and extensive identity with its problems.

CHAPTER IV

CLASSIFICATION AND SEGREGATION

CLASSIFICATION has been the point of emphasis of reformers inside and outside of prisons. It has been in a sense the least practiced institutional method, although most discussed. The introduction of classification into the scheme of correctional institutions has been responsible, as much as anything, for the diversification of types of institutions. The subject of classification has been, throughout the history of prison reform, fundamental in its progress.

Classification in 1650 meant something quite different from what it did in 1800, in 1850, in 1870, or at the present day. Were we to define classification in its present connotation, we should probably find it difficult to recognize in it the same principles that were largely advocated at the beginning of prison reform. There is, however, a minimum in the definition of classification which may well serve as a guide for our discussion. *It is essentially a process of dividing an undifferentiated mass into smaller units homogeneous within themselves and different from the other units; such division into unit groups being for the purpose of more effectively dealing with each individual by means of the homogeneous unit groups.*

There are two main aspects of classification: one that relates to the distribution of differing types of inmates to different types of institutions, and the other to the distribution and differential treatment of inmates within a given institution or system of institutions. These two aspects of

classification are sometimes intimately combined, at other times quite independent. The history of each is practically coeval with the history of prison reform, and the direction of both is towards a classification harmonious with the modern concept of penology as based on criminological definitions. The first kind of classification, that of differing types to different institutions, has been determined mostly by legislation; the other, intra-institutional classification, has been based more upon the development of institutional technique and reform agitation.

The lines along which both have proceeded may be conveniently listed as follows:

1. Legal status of inmate, that is, whether convicted prisoner, prisoner awaiting trial, civil prisoner, witness, etc.
2. Sex
3. Age
4. Technical nature of crime or criminal history
5. Character
6. Behavior in prison
7. Criminological factors
8. Physical condition
9. Color
10. Miscellaneous factors
11. Institutional technique or labor assignment.

Most of these categories have applied to both types of classification considered, but some have been more important for the one than for the other.

CLASSIFICATION RESULTING IN INSTITUTIONAL DIFFERENTIATION

As to institutional differentiation, the penal law has, from the first, provided certain classifications. It distinguished between prisoners who were held as debtors and those who

were held under criminal action (the only two groups to whom imprisonment applies in New York up to almost the end of the eighteenth century). These two groups were definitely separated from the very first in different parts of prison buildings. In the growth of the prison in New York City it was necessary, before the end of the century, to designate separate buildings for criminal prisoners and for debtors. With the epochal law of 1796 there was created another legally defined class, consisting of those convicted of felony. For these a new institution, the State Prison, was provided. We had, therefore, at that time, three distinct groups legally defined, for whom separate institutional provision was prescribed. A fourth type, constituting the semi-criminal element held in the workhouse of New York City (which was part of the City's almshouse), was not legally defined until the law of 1788 which permitted the commitment of misdemeanants to Houses of Correction or county jails. The general type of inmates previously confined in the workhouse continued to be sent there but now as a legally defined group. We enter, therefore, the nineteenth century with a classification including four distinct definitions, namely: debtors, those awaiting court action, misdemeanants in jails or workhouses, and felons in the state prison (or county jails).

Separation of the sexes seems through all this time to have been taken for granted, but there was a lack of standards of separation, of legal provisions therefor, and of a live public conscience. There was really no separate institution for women until the opening of the first Magdalen Home in 1830, and of the state prison for women at Sing Sing in 1839.

No further attempt was made to define a new group in law until the establishment of the House of Refuge in 1824, although the need for further specialization by legislative

enactment seems to have been recognized soon after the establishment of the first state prison. The "inspectors" of that prison, recognizing the difficulty of imposing a uniform and strict institutional regime upon all their inmates, both serious felons and weak repeaters, recommended, in 1822,¹ the establishment of workhouses akin to asylums for each county "to which all (the latter) classes might resort. That would effectually draw the line between the hardened culprit and the suffering offender, and the discipline of the prison might then agree with the disparity of crimes and as the plea of necessity would be banished from their walls, justice might then be strengthened"

The law of 1824 and several laws in the immediately succeeding year establishing and defining the House of Refuge created a new legal type consisting of children, both male and female, in whose cases age was the determining factor. The statutory revision of 1828 carried the provisions of these special laws into the organic law of the State and created a definite legal group consisting of children under sixteen convicted of felony.² The definition of this group in the legal classification has remained practically unchanged except for the addition of children convicted of offences less than felony but within the same age group. The only change occurred in 1913 when, because of institutional expediency, another age and crime group, consisting of misdemeanants between sixteen and eighteen years of age was added to those who might be committed to the House of Refuge. By 1865 there were at least five juvenile institutions based upon the definition in law of this age group. As quoted by Dr. E. C. Wines, these institutions were the House

¹ Report of the Inspectors of State Prison submitted Jan. 21, 1823.

² S. R., 1828, pt. 3, ch. i, title 7, sec. 17, based on provisions of the law of 1826 which was an amendment of the original act establishing the House of Refuge.

of Refuge, the Western House of Refuge, the Juvenile Asylum, the Catholic Protectory and the Rochester Truant Home.¹ Within the juvenile institutions the sex classification was strictly carried out. Male and female departments were established in the House of Refuge at the time of its inception. The Western House of Refuge also started with a female department separated from the boys' section but the entire department was soon abandoned.

Further classification along these lines resulted in the establishment of county penitentiaries, private reformatories for women, a State Hospital for criminal insane, and then, in chronological order, the establishment of Elmira, of the state reformatories for women, the New York City Reformatory for Misdemeanants, the Dannemore State Hospital, the State Farm for Women at Valatie, the Board of Inebriety in New York City, the "paper" institutions for tramps and for misdemeanants, and of the as yet only proposed institution for the feeble-minded offenders. We find several lines of classifications in this diversification of institutions. The principle of legal status, (for lack of a better term) has applied to county jails only, and has there been but imperfectly carried out. Witnesses, civil prisoners, prisoners convicted, prisoners serving time, may all be kept in the same county jails though in different rooms. Exceptions are found only in New York City where separate civil prisons are provided in New York, Kings and Queens counties, and a separate institution for witnesses in New York County. The sex classification we find represented in the existence of a separate state prison for women, of a state farm for women, and of state and private reformatories for women. The classification along this line is, however, not yet complete or satisfactory. Women are still kept in

¹ *Prison Association of New York, Annual Report, 1865.*

county jails and with one exception in county penitentiaries. The state prison itself is insufficiently separated from the state prison for men at Auburn. Nothing but the entire separation of all women offenders from the whole class of male offenders will adequately solve the problem of classification in this respect. Failure thus far completely to separate women's departments has meant at least two distinct evils: first, possible contact between men and women with serious results; secondly, administrative neglect of the female departments of institutions which are always a second thought with the executive head.

The principle of age separation has accounted for the state reformatories for boys in New York and Rochester, and later for girls, at Hudson; private reformatories of the same nature, such as the Children's Village at Dobb's Ferry, the Jewish Protectory at Hawthorne, the Catholic Protectory in New York and Lincolndale, the George Junior Republic, Father Baker's School and others.

No separate institutions have thus far been established by the State or any of its political subdivisions for colored inmates. The race question has never been acute enough to require it, and institutional difficulties have not as yet arisen to a sufficient pitch of intensity to demand assignment to separate institutions. The special investigation of the New York State Reformatory for Women at Bedford in 1915 has led to a stronger conviction on the part of many that such separation—for women at least—is advisable, but public sentiment has not yet been sufficient to back such a recommendation. Nor has the group of special types such as mothers with babies as yet justified the establishment of separate prisons for them.

The nature of crime or the criminal history of the prisoner as a principle of classification accounts for the existence of county jails, county penitentiaries, state prisons, reformato-

tories, probation, and special institutions. It has not, however, led to a system of institutions with mutually exclusive groups. Thus, while in accordance with the penal law, misdemeanants or lesser offenders may be sent to county jails or city prisons (which act as county jails), the same type may also be sent to county penitentiaries, to city workhouses, and to city, state or private reformatories. The limits are overlapping. No one may be sent to a county jail for a longer period than one year, or to a workhouse for a longer period than six months, or to a reformatory for women for a longer period than three years; but the same group may also be sent to the county penitentiary, workhouse or reformatory as well as to the county jail. No felons may be sentenced to the county jails or workhouse but they may be sent, within certain limits, to the county penitentiary, the state prison, the reformatories for women or be placed on probation. We think of state prisons as the places for felons. But women felons may be sent to the reformatories, and men, if less than thirty, may be sent to Elmira, and under certain conditions to the penitentiaries, for the same offence and for the same period as to the state prisons.

In respect to sentences, county jails have a limit of one year, reformatories for women are limited to a maximum of three years, and Elmira reformatory has varying maxima according to the offences of the persons committed. The special institutions have varying and arbitrary limits: six months, a year or eighteen months for the home of inebriates in New York City, a maximum of eighteen months or two years for the tramp colony, a maximum of three years in the state farm for women.

Previous criminal history is in many cases a determining factor. Only those may be admitted to the Elmira Reformatory who have not previously been convicted of a felony. Convictions of other nature are disregarded.

First offence is a requisite for admission to the state Reformatories for women at Bedford and Albion. On the other hand, the State Farm for Women at Valatie may accept only such as have been convicted no less than five times. An indeterminate sentence is permitted under the law of 1915 at the New York City Workhouse in case only of those committed a certain number of times within a prescribed period previous to the last conviction. Probation is for first offenders only. No limits of this nature are imposed upon commitments to jail, workhouses, penitentiaries, juvenile institutions or State prisons.

Classification on the basis of character has, perhaps because of its very vagueness, never led to a representation in terms of institutional type. Where transfers are permitted between institutions on the basis of character it is really more prison conduct or behavior than character that is meant. Transfers between different institutions of the Department of Correction in New York City, when apparently on the basis of character, are really more definitely based on industrial capabilities or in some cases on age, or the amount of security necessary for the retention of the prisoner.

Similarly, very little distinction is made on the basis of physical or mental health. Aside from the establishment of the Matteawan State Hospital and of the Dannemora State Hospital, there are no separate institutions to serve for distinct physical or mental types. Institutions for the feeble-minded or for the psychopathic are still within the realm of reform agitation.

We see, then, that some of the principles of classification have resulted in absolute and total separation of groups into distinct institutions. Age has been perhaps the most potent factor in this respect. Sex has been a close second. The other factors, while potent in varying degrees, have not succeeded in effecting a complete separation of types defined

under their terms. The principles of classification themselves, as briefly outlined above, are more or less automatic in their origin and in their function. They represent the practical application of a groping criminology, which proceeded along the right direction when based upon elementary factors such as sex, age, and in some cases criminal history. They are ceasing now to be of further use in the development of the correctional system of the future which is to be based rather on the findings of scientific research into the nature of each offender.

CLASSIFICATION WITHIN INSTITUTIONS

Classification in the intra-institutional sense is a subject which more concerns this study of methods. It is, indeed, that aspect which has been responsible for the greatest amount of denunciation of penal institutions and of the penal system as a whole. In 1845, practically the first year of the existence of the Prison Association, when it was finding its place and function, it reports through its committee on prison discipline that "the glaring wrong of the old plans of prisons consisted in the confinement in common of prisoners of all ages and of all grades in the scale of crime."¹ In 1853 we find similar mention: "Promiscuous intercourse had been found resulting in the total deprivation of the mental faculties; solitary confinement without labor meant overthrow of the mental powers. The mind was wrecked in either system." Yet conditions then were considered as improved when compared with previous years:

But a few years have elapsed since culprits were thrown in promiscuous masses into our prisons and were there left herded together without the opportunities even for personal cleanliness, a sport for their fellows and a prey for the worst

¹ *P. A.*, 1847.

baseness of our nature. Their only care from without was a daily allowance of food and a bountiful supply of intoxicating drinks to such as had the means of procuring them—thus stimulating to a revolting excess passions naturally under too little control and rendering a prison house more like a den of hyenas than a fit receptacle for human beings.¹

Further back, the movement leading to the creation of the House of Refuge was based upon the recognition of the evils of indiscriminate congregation in prison. The committee of the Society for the Prevention of Pauperism (referred to elsewhere) cites the large number of children in Bellevue prison and in the Bridewell, deplores their necessary moral pollution by contact with older inmates, and suggests for this reason the establishment of a separate prison for the younger inmates. Some of the greatest evils were overcome by removing children, separating women and creating institutions for minor offenders. But lack of classification still continued to arouse more righteous indignation than any other prison evil. In connection with his intensive study of 200 convicts in 1875—perhaps the first intensive study of this kind, and of the same excellence as his other studies—Richard Dugdale argued:²

Now, if the environment furnishes the elements of the mental nutrition, and largely determines by that means the character of the mental and moral growth, what are we to think of a prison system which, with vast perfunctory incompetence, masses an army of moral cripples, cursed with contaminating characteristics held in common, and thus, under the imposing title of "the congregate system," prepares an environment of criminal example just fitted for the assimilative power of each individual malefactor? Be it noted that in all that has been said hitherto, with only one exception, the criticism applies to the system of congregate imprisonment, which, bad at

¹ *P. A.*, 1847.

² *Ibid.*, 1875, p. 126.

first, has, in half a century, degenerated by progressive and successive forms, kinds and degrees of official corruption, ignorance and perhaps still more dangerous indifference, until it has neither philosophy, ascertained experience, justice, public advantage or common sense to recommend it. Not one word has been said of the abuses growing out of mismanagement except in one respect, that the number of convicts has so outgrown the provisions for their imprisonment, that they are now "doubled up" to the extent of 1710 in the three State prisons. Bad as the system is, it does not contemplate this demoralizing practice. How soon is the State, with blind-fold eyes, to cease employing her ignorant left hand as the aider and abettor of the most abandoned crimes of human nature, and with her nerveless right being forced to drag the ponderous sword of justice at her heels instead of wielding it as a weapon? Are we to wait till the public sense of humor shall be roused into a shout of derision at the huge buffoonry of an exhibition which makes rogues nudge each other, and turns good men into cynics?

In the very thoro investigations of the special commission of the Prison Association appointed in 1866¹ opinions of many experts were obtained on the matter of classification. The minutes of the commission show general agreement on the importance of classification between prison executives with extensive experience and reformers outside of prisons. A report of the Prison Association on county jails and penitentiaries in 1872 makes special reference to the effect upon the entire correctional work of the State of the lack of classification in those institutions.²

In 1900³ the case is clearly put by Dr. Barrows:

State control would permit the free classification, distribution and transfer of prisoners. The present classification is incom-

¹ *P. A.*, 1866.

² *Ibid.*, 1872, p. 3.

³ *Ibid.*, 1900, p. 16.

plete, because it covers but a limited number of institutions. It is also defective because it is based upon the number of convictions of the prisoner and not upon his capacity, either physical, mental or industrial. A separation of convicts according to their first, second or third offense is insufficient in many ways. The first offender may have committed more than one crime before he was caught. That he is convicted a second time may be owing in some measure to the faults of the prison to which he was committed, for our prisons have often been institutions for promoting crime instead of repressing it. When first offenders work but half their time and fail to acquire a useful trade or the habit of industry which comes through productive labor, the system is in some way responsible if the prisoner when he comes out of prison adopts the habit of idleness which he has acquired within it. A classification of prisoners based upon their industrial capacities, both physical and mental, the elimination of the defective and the incompetent, the subdivision into various grades of those capable of education in industrial pursuits and the regulation of recidivists and habitual vagrants to low-grade labor, would bring our prison population into new relations to productive and educative labor and to other reformatory influences which might be intelligently invoked and applied.

There has been consistent agreement on the necessity of intra-institutional classification, but success in this respect has been slower in coming than diversification and creation of new institutions. The progress of classification within institutions has been very slow. Indeed it may be said, that, with the exception of the cottage institutions in recent years, and excepting the early years of the women's reformatories, classification has been more a negative term,—a corrective and critical standard, than an actual fact.

In discussing intra-institutional classification in the following pages, it will be convenient to follow the categories of classification mentioned above:¹

¹ See page 56.

I. LEGAL STATUS

The classification and separation of prisoners in accordance with their legal status applies practically to county jails alone. Debtors and criminal prisoners have been kept separate, from the very first. This may have been because the two types were kept distinct in the public mind and in all provisions of the law relating to them. It is not clear whether there was any law requiring their separation. It rather seems that they were conceived of as in every sense separate groups, and that if they were actually included in the same building it was for convenience only, and more or less accidental. It would seem that the first legal provision definitely requiring the separation of certain classes of prisoners in the county jail was introduced in the revised statutes of 1828.¹ The keeper was to keep separate "contempt cases (civil prisoners) and those serving sentence;" to separate male and female and to prevent conversation between prisoners. It was especially provided in section eleven that those under sentence were not to converse with anyone except their keepers or in their presence. The law of 1847 which systematized existing laws relating to jails and introduced some new ones required: "A sufficient number of rooms for the confinement of persons committed on criminal process and detained for trial separately and distinct from persons under sentence." It also required the separation of witnesses and those held on civil process. These were to be so separated as to prevent conversation. A later chapter, 464 of the Laws of 1875, authorized counties, for the purpose of further separating those cases, to provide separate detention houses for three groups, namely, witnesses, women and children. There has been, therefore, no lack of legal provision for the separate detention of these different groups. Yet

¹ Pt. 3, ch. iii, art. 1, title 1, secs. 8, 9 and 10.

reports throughout indicate that the required separation was almost entirely disregarded. Early reports of De Beaumont and Toqueville and of the Boston Prison Society give hints of this neglect. The reports of the Prison Association of New York are explicit. In 1846 the agent of its committee on detentions reports lack of separation of witnesses as well as of sexes in New York City;¹ and in locating responsibility the executive committee says: "The Common Council with whom is abundant authority to correct the evil seem disposed to content themselves with imitating our example of scolding occasionally." In 1848² it is stated that "there is no example in this State of a prison in which the law (regarding the separation of different classes) is observed" In 1879 it is reported³ that "as to the separation of the accused and the convicted—there are only fifteen jails where this requirement of the law can be carried out and in four of these the opportunity is neglected. In many of the jails where there are several distinct rooms, separation has been for years impractical on account of their overcrowded condition We have, therefore, to report that there are forty-eight jails in which this separation is not carried out" Such quotations might be multiplied indefinitely. In our own day there are many jails in this State in which the writer has repeatedly found lack of any separation of these groups or a very imperfect one. It has been particularly the failure to separate witnesses that aroused reformers in the middle of the last century. Repeatedly we find denunciations couched in the strongest words. All the evils and discomforts suffered by this group seemed to be doubly unjust because of the injustice in the first place of subjecting them to any restric-

¹ *P. A.*, 1846, pt. 1, p. 53.

² *Ibid.*, 1847-8, p. 43.

³ *Ibid.*, 1879, pp. xxii and xxiii.

tion whatever. They were not only not convicted of crime, but not even charged with it. And among the many things they had to submit to, the necessity of associating with other prisoners, and sharing their mode of living seemed to the theoretical observer the hardest.¹

This type of intra-institutional classification, namely by legal status, affects the county jails only, and its history therefore, is confined to these institutions.

2. CLASSIFICATION BY SEX

One may hardly speak of the separation of sexes within institutions as coming under the category of classification, for it is so much a matter of common sense. It seems to have been necessary, nevertheless, to provide for such separation, either in laws or in rules and regulations of institutions, if only to make possible the prosecution of officers violating this elementary principle of separation. That such violations, more or less crude, have taken place from time to time is beyond doubt. We find, therefore, the revised statutes of 1828² requiring the keeper of prisons to separate male and female prisoners, except husband and wife. This provision refers to county jails only. The requirement is repeated in later laws, notably that of 1847. The history of the separation of sexes, therefore, comes almost entirely within the field of enforcement, either of law or of regulations or of ordinary, commonsense administrative standards. Such enforcement we find in varying degrees with a tendency towards the elimination of the entire problem by the removal of female prisoners from institutions designed for male prisoners. We find special mention of the absolute separa-

¹ In fact, it is very uncertain, so far as we can tell to-day, whether in the great majority of cases there is any more than merely a technical difference between witnesses in criminal cases and other prisoners.

² Pt. iii, ch. iii, art. 1, title 1, sec. 9.

tion at mess and at all other times, of the girls in the House of Refuge.¹ The rules and regulations provide from the first for strict separation, with matrons in charge of the girls. The rules and regulations in 1832 prohibit any of the girls from going to the yard or any boy from entering the female section of the House. An ordinance in the City of New York relating to certain changes in the use of prison buildings in 1833 makes it a duty of the police justices, in detaining persons for examination, to require the separation of the sexes. Chapter 464 of the Laws of 1874 authorizes boards of supervisors of the different counties to erect or designate separate houses for witnesses, women and children.

There is neither need for much legislation on this point nor has there been much, but the neglect of separation is reported again and again. In New York City such neglect is reported by the committee on Detention of the Prison Association in 1846 in reference to the City Prison. An example of the insufficient segregation of these groups reported in 1864² reads:

... in one jail it is stated that the turnkey himself sleeps in the corridor with only a wooden grating between him and the female prisoners, with his bed not six feet from theirs, with a light burning in the prison, and with the key of their room in his pocket. There is just as much exposure, mutually, of their persons, and just as much facility for conversation or anything else as if they slept in the same apartment, as indeed they do to all intents and purposes. . . . In several of the counties it has been presented as a nuisance and an immorality by the grand juries, but without effect.³

¹ *Rules and Regulations*, 1832, from documents relating to the House of Refuge, p. 276.

² *P. A.*, 1864.

³ *Ibid.*, 1864, p. 195.

In 1879 there is the following report on the separation of sexes in the county jails.

There are only twenty-six jails of which it can be said that this law is carried out so as to preclude the possibility of communication between the sexes, and in thirty-three it is reported that this separation is very imperfect. In many jails the separation extends to locking up in different cells or wards, but in such a manner that the prisoners can see and speak to each other, while in that of Westchester County, where only this nominal separation exists, children may be born of the access which is always possible when the jail is overcrowded, there having been at one time as many as one hundred and forty prisoners with only thirty-six cells, or four prisoners to one cell. In almost all the jails the sexes have the means of corrupting each other. In many, the only separation is a board partition which is usually cut through where the planks join, so as to facilitate intercourse, while in others it consists of only a wicket which can be opened from the outside by male prisoners. In Auburn and Westchester jails a woman cannot enjoy the privacy of her own cell if a male inmate chooses to invade it.

There is still at this date (1918) no satisfactory physical provision for the separation of sexes in many of the county jails, and in many cases, even where such provision has been made, the administration of the jail fails to take adequate precautions against the unsupervised entry of male prisoners into the female department. Not very long ago serious scandals arose in several of our counties¹ and in one it resulted in the indictment and conviction of some prison officials.

Actual communication or danger of communication in penitentiaries or State prisons has not been so great. In these the more serious fault has been insufficient freedom

¹ *E. g., Oneida and Nassau.*

of movement accorded the female prisoners because of the danger of communication. The female department of the New York Penitentiary at Bellevue in the early days of that institution; later the Women's State Prison in the City of New York (Bellevue Penitentiary); later still the female department of the Penitentiary on Blackwell's Island offered cause for serious criticism, not so much because of imperfect separation, as because of the resulting restriction of movement of female prisoners, neglect, overcrowding, and lax sanitary standards.

The future of sex segregation in institutions is in the removal of all female prisoners from institutions used for men.

3. BY AGE

The indiscriminate commingling of young and old is recorded very early in the prison history of the State. There seems to have been a provision included in Chapter 83 of the Laws of 1819 requiring the separation of young and old prisoners in the State prison, and to judge from the report of the Board of Inspectors of the State Prison, some classification along this line was undertaken: "all under the age of fifteen lodge together" says the report for 1822. Perhaps that is true; but while lodging separately they were not prevented from working with the other inmates of the prison, and later reports by others than official authorities would seem to indicate that even that separation was not kept up. With the opening of the Sing Sing Prison the dormitory plan was abandoned and the separation of young inmates, while easier in a sense because of the separate cells, became in fact more difficult because of the congregate shop system. Commingling of young and old is reported for the New York City bridewell and jail for this early period. The Association for the Prevention of Pauperism in their argument for a juvenile reformatory, shows a daily average of

thirty-five boys between twelve and sixteen detained in 1824 in the Bellevue Penitentiary and incompletely separated from the adults. The New York County grand jury in 1824 is reported as criticizing this intermingling of hardened criminals with young and innocent offenders.¹

There has been no law requiring the separation of children or minors from adults when once admitted to State prisons or county penitentiaries. Children of tender age are known to have been committed to State Prisons. As late as 1865 there was a boy of fourteen years in Sing Sing Prison, two of fifteen, and one hundred and nine between sixteen and twenty years of age. Auburn Prison also had a boy of fifteen years and four of sixteen.²

The first time that children below sixteen were removed from jails occurred in 1875, when the Society for the Prevention of Cruelty to Children in the City of New York agreed to care for children of that age under criminal process. In 1877 the law definitely provided for the removal from county jails of all children under sixteen.³ Up to that time there were frequently cases of children as young as seven years held in the county jails and city prisons. A particularly revolting example of this is reported in 1846⁴ as follows:

JUNE 18.

Two boys, nine and seven years of age, both blind, were found in the street; had accidentally strayed from the blind

¹ *The Evening Post*, August 19, 1824.

² *P. A.*, 1865, p. 62.

³ Chapter 428 of the laws of 1877, "no child under restraint or conviction apparently under the age of fourteen years shall be placed in any prison or a place of confinement or in any court room or in any vehicle for transportation to any place in company with adults charged with or convicted of crime except in the presence of a proper officer."

⁴ *P. A.*, 1846, pt. i, notes of general agent.

asylum and were committed to the Tombs and placed in a cell with a corpse and a number of most abandoned persons.

JUNE 20.

Have been returned to the asylum.

Considerable numbers of children of tender age were annually committed to the Tombs. During the year 1846 two hundred and eighty-two children under ten years of age, and some four thousand between the ages of ten and twenty are reported to have been so committed. Even after the passage of the Law of 1877 the confinement of children in jail still continued. To some extent such commingling also continued in the county penitentiaries.

The establishment of reformatories, beginning with the House of Refuge and continuing with Elmira and the Women's Reformatories, tended to perpetuate the dividing lines between adults and children as at sixteen years of age. This has made it difficult to proceed towards the further separation of minors over sixteen. Not until 1907¹ was the county law in relation to jails amended (Sec. 82) providing that "minors shall not be put or kept in the same room with adult persons," and only recently, in 1917, was a law passed through the activities of the Prison Association, requiring the separation of all minors in the county penitentiaries as well.

Within reformatory institutions the further subdivision in accordance with age was early recognized as a necessity. In the House of Refuge children were divided into separate classes according to age and so segregated. In the first State reformatory for women at Hudson, inmates were received from the age of twelve upwards and the necessity, therefore, of separating those between twelve and sixteen years of age

¹ Chapter 275, L. 1907.

was soon recognized; but no steps were taken to effect such separation until 1894, when request was made for a separate cottage for this younger group, and not until 1899 did the authorities actually separate them by assigning a special cottage for their use.¹ Nevertheless, an investigation of the institution in 1890 still shows children between twelve and sixteen placed in immediate contact with older degraded women.²

In some of the private reformatories for women, especially those of Catholic faith, age-classification has been consistently carried out. In these it is based partly on the industrial capacity of the inmate; those under sixteen years are designated as "preservants" and are entirely separated from the older inmates. There is a certain amount of classification on this basis at present in other institutions also. The House of Refuge, in its separation of the inmate body into nine groups (begun a year or two ago) adopts the age basis as the principal means. In the State Industrial School at Industry the same principle is largely carried out. We find it to some extent in the women's reformatories where special cottages are set apart for the younger inmates. In all these cases, however, the distinction between age difference and character difference is not complete. Almost invariably we find age involved in the character and conduct basis, and in many cases in classification by crime.

4. BY CRIMES

The separation of inmates convicted of different crimes or grades of crimes would probably have been a more important principle in institutional methods had it not, in the first instance, become largely responsible for the establish-

¹ Carson, *N. Y. State Reformatories for Women*, MS. in N. Y. School for Social Work.

² *Ibid.*

ment of new institutions. The penal law has saved the institutions much of the trouble of classification by crimes. The division of crimes into felonies, misdemeanors and lesser offenses, and the further division according to the length of sentences, has been an automatic determinant as to the kind of institution to which the prisoner was to be committed. The range of internal classification was therefore reduced. This advantage later depreciated by the overlapping of permissible sentences to different institutions, so that prisoners convicted of the same crime and for the same length of time might be sentenced to several different types of institutions. Chapter 83 of the Laws of 1819 provided for the separation in State prisons of those convicted of higher crimes, and the State Prison Report for 1822 states that second and third comers were also separated from the rest. The New York City authorities in an ordinance of July 1, 1833, prescribed the separation in the city prison of the "presumed felon from the supposed vagrant and both from those who are simply disorderly and refractory."

The previous criminal history of prisoners has served to some extent as a determinant regarding the institution of commitment, especially after the establishment of the Elmira Reformatory which set up the standard of "first offense" as qualification for admission. This principle was continued in the women's reformatories, in probation, and in the distribution of inmates among the State prisons. To the extent that the criminal history of the prisoner did not determine the institution of commitment, and to the extent, therefore, to which prisoners of different grades of crime and criminal history were committed to the same prison, the institution was burdened with the problem of their classification along those lines. There are two reasons why this was deemed necessary. First, because more intense measures for security and safe-keeping have been thought necessary

in the case of prisoners sentenced to longer terms, and secondly, because it was assumed that the degree of seriousness of the crime in some way determined the character of the prisoner. But prison executives were bound to recognize in their daily dealings with prisoners of many kinds, what is now generally held by penologists and criminologists, namely, that the technical definition of the offense and the arbitrary pronouncement of sentence for shorter or longer periods bear little or no relation to the character of the prisoner. When, therefore, they emphasize this difference, it is mainly from the standpoint of the problem of safe-keeping. It was, for example, with that in view, that the Board of Inspectors of the State Prison of New York recommended in 1822 the erection of county work-houses and the elimination from the State prison of the lesser offenders conceived of as really different types and requiring different treatment. In those of our institutions where there is greatest commingling of felons and misdemeanants, namely, in the county penitentiaries, we find practically no attempt, and little expressed desire to segregate in accordance with differences of crime. The most thorough-going classification ever attempted in the State Prisons, (in the late eighties) dividing the entire State prison population into three classes, was based upon the criminal history of the prisoners, but the bearing of the classification was upon the problem of labor. Those with less serious histories and, therefore, presumably more redeemable, were to be so employed as to give them the best possible industrial training, while the other extreme of the classification was to be made as productive as possible for the State with comparative disregard of the inmate's interest. This classification was carried out only in a formal way and was later changed by executive orders until now it has lost all resemblance to its original intentions, and has been utilized for the purpose of regulating privileges on the basis of prison conduct.

5. BY CHARACTER

Classification by character is perhaps the most important, and possibly the least effective one. Many of the other attempts at classification, including even that by age, and certainly that by crime and criminal history, appear to be mere gropings in this direction. The great cry of prison reformers has been that the prison, by affording indiscriminate association without adequate supervision, becomes a serious moral danger to its more innocent inmates. Of all the criticism which has justly have been leveled at prison administrators from the beginning of prisons, it is their failure to separate on the basis of character of which they may be most readily acquitted. Character is the most intangible thing, most subject to error in judgment, least adaptable for standardization, and requiring time for definition. Moreover, the executive would have to be the arbiter of classification, and that is task enough for a man without any other duties. If, therefore, administrators, unable to devote the necessary time to the subject, relied on mechanical principles or tests for the recognition of character, they would probably have to adopt age, conduct, criminal history etc., as guides, and therefore would advance no further than the penal law. It was largely the recognition of this almost insurmountable difficulty in the way of applying the principle of character basis for internal classification that was responsible for the great vogue of the idea of separate confinement. Because of the great importance attributed to the prevention of moral contamination, and because of the consequent insistence on segregation by character, the evils attendant upon the system of separate confinement did not receive the proper attention or valuation. Separate confinement seemed such an easy way of solving the difficulty, and the very simplicity of the procedure shut out adequate consideration of its disadvantages. We find that even in-

mates of prisons, who certainly should have a proper appreciation of the situation, failed to judge them rightly. A former inmate of the State Prison of New York, writing in 1823,¹ and enumerating the principal failures of the State Prison, deplores that the "convicts, by intermingling corrupt each other" and proposes the remedy of confinement in solitude, incidentally without labor. He admits that there was silence in the work rooms but emphasizes the unrestricted communication in dormitories. At the time of his writing, this subject was the centre of the most extensive and heated of all controversies in the history of prison reform, and the Board of Prison Inspectors felt it their duty to take a stand in the matter. As was to be expected, their stand was for the system existing, namely, that of congregate rather than separate confinement. They experimented with separate confinement as follows: one John Smith and one John Wightman were placed in solitary confinement for six and three months respectively:

He (John Smith) had no irons, only a little shackle on one of his ankles with several links of chain fastened with a staple in the floor allowing him to walk the extent of his cell . . . regularly three times every day saw and spoke to at least two persons when receiving his food. . . .

The inspector visited John Smith a few days previous to his liberation,

and instead of a humble, contrite penitent, we found a revengeful, hardened desperado. John Wightman was also liberated after three months' confinement, and no signs of reformation were manifested.

The vicissitudes of the systems of congregate or separate

¹ *Inside Out, By One Who Knows.*

confinement will be referred to again. Today the controversy is dead and the words of Mr. Brockway that "separate confinement seems only suitable for the incorrigible, or temporarily for rest and discipline," represent the attitude on the part of prison men today.¹

Since separate confinement was never accepted as a principle of prison administration in this State classification has consisted in the separation of groups rather than of individuals. It has been carried out more in some institutions than in others. The organizers of the House of Refuge scored the Penitentiary in 1824 for failure to separate its young inmates on the basis of character. In their own institution, immediately upon its organization they devised a plan of classification providing for six groups. These were to be differentiated by dress, lodging, diet, hours of labor, and recreation.² By these distinctions we see that the separation partook of the nature of division by behavior as well as by character. In 1832 the institution reports four grades of inmates divided according to character and bearing distinctive badges. Here again character seems to have denoted rather conduct or behavior than what we understand by character, for it is added in the report that "degrading" and promotion from grade to grade was permitted.³ In the tentative recommendations of the Prison Association in its second report (in 1845) it is suggested that classification in institutions be into "hopeful, doubtful, and irreclaimable" groups. The impracticality of such classification for most institutions is patent. Their analysis and recitation of cases of harmful intermingling among inmates cannot be questioned, but the remedy was rather amateurish.

¹ Zebulon R. Brockway on *The Moral Classification of Prisoners* prepared for the Seventh International Congress, *P. A.*, 1904, p. 69.

² *Documents relating to the House of Refuge*, p. 23.

³ *Ibid.*, Rules and Regulations, p. 27.

There are on the whole three ways of housing inmates in institutions: the cell system, the dormitory system, and the cottage system. The cell system is perhaps least amenable to classification by character, for the separation is not carried out beyond the cell. Communication when going to cell or leaving cell or even while in the cell is easy. But the consciousness on the part of the administration that separate cells denoted real separation has militated against any further attempts. Recently there have been a few attempts to classify in cell institutions but as yet there is no marked success, for it requires partitioning off of parts of cell blocks. The dormitory system exists in very few permanent institutions. The New York City Workhouse has it; Hart's and Ricker's Islands are dormitory institutions; the temporary accommodations at New Hampton Farms and at the Erie County Farm are on the dormitory plan; but no classification by character appears in any of these institutions. Age is considered to some extent and physical fitness and a few other minor factors. The cottage institutions, which include the juvenile and female reformatories and, most recently, the new Westchester County Penitentiary, are the only ones which are able and do to some extent classify by character. It is done especially in the State Agricultural and Industrial School at Industry where thirty-odd cottages provide facilities for the exercise of cross-classification, taking into account age, character, mental and physical fitness, and needs of vocational education. The extent of such classification in the women's reformatories, while spoken of from time to time, is in reality negligible. We may conclude that on the whole classification by character, while early advocated and constantly recognized as necessary, has been, because of inherent practical difficulties, almost impossible and has had to be approached indirectly through classification by age, cause of commitment or other factors.

6. BY CONDUCT, OR BEHAVIOR IN PRISON

When we come to the matter of conduct or behavior of prisoners we are treading upon ground sacred to the prison executive. The behavior of prisoners, or, to use the more general and favored term, prison discipline, is undoubtedly the foremost consideration and daily concern of the prison warden. We might therefore expect, that, in so far as prison discipline is improved and the conduct of prisoners better regulated by such classification it would therefore be found fully developed in prison history. But what we find in this respect is very disappointing. Apparently the only separation based on this principle has occurred in cases of punishment, when the prisoner required removal from the inmate body and was assigned to solitary confinement. Perhaps the distribution of "soft snaps" in the assignment of inmates, and the allowance of special privileges to the well behaved may be interpreted as a rudimentary classification based on conduct. But there are no traces of real classification on this basis until the organization of the House of Refuge. Beginning with that institution and extending through the greater part of the nineteenth century the conduct of prisoners has played an increasingly important rôle in their classification and separation. It has taken the form, in reformatory institutions, of the marking or grading system and later in the century, in the State prison, it accounted for their division not by previous history but by behavior in prison. Often conduct has been confused with character, and we find frequently the claim that classification by character is exercised where it really is purely a matter of conduct. We have seen that the House of Refuge had several grades and that promotion and demotion were possible. The Maconochie plan and later the Irish system were largely based upon progress of conduct, though not

infrequently referred to as progress of character. The Elmira grading and marking system has the conduct of the prisoner as its chief basis. Progress may indeed be determined by his scholastic, industrial and military accomplishments, but the system on the whole depends upon the principle that greater effort (and greater success) mean advancement and that advancement is expressed in terms of grades or groups. Sometimes such grade progress has meant after all physical separation and differences in privileges. It has meant that in the House of Refuge, at the Elmira Reformatory, and later in the State reformatories for women. The system is still largely in vogue today. At the House of Refuge, for example, eight weeks' good conduct is requisite before eligibility to the privileged group, and a certain number of weeks in that group is requisite for eligibility to appear before the parole board. In this case no physical segregation accompanies the division by conduct. At the Elmira Reformatory, until recently, separate dining rooms were provided for the different grades, and the third grade, practically under punishment, was entirely separated for all activities. In the women's reformatories the general plan has been to have at least two, sometimes three, conduct divisions, not always so designated, but clearly so recognized; the first coincided with the period of admission, the second followed assignment to a cottage, and a third, often following assignment to special cottages, carried additional privileges such as self-government etc. (especially at the Bedford Reformatory during the administration of Dr. Davis).¹ The marking system, but without physical segregation, has been carried on at the Albion Reformatory in a very unsatisfactory manner. It exists in a certain form in the School at Industry, but is not there of great im-

¹ Carson, *op. cit.*, especially for the first ten or fifteen years after the establishment of State reformatories for women.

portance because the cottage grouping has been based upon other considerations.

All this classification was often seriously interfered with by institutional exigencies, especially overcrowding. The first really fruitful attempt to segregate on the basis of conduct has been probably that at Elmira, begun a year or two ago with the elimination from the general population of the psychotic, and psychopathic and seriously feeble-minded group. It was found that the greatest amount of disciplinary difficulty was experienced not with the general population but with a few uncontrollable cases who by their frequent misconduct not only got themselves into trouble but excited their associates and caused a great number of infractions by other inmates. By the removal of this group to a separate part of the institution and their treatment there under specially lenient methods calculated to reduce the irritation to a minimum, their own infractions were reduced to a negligible quantity and their untoward effect upon the rest of the inmate body has been largely eliminated.

It is this experience at Elmira that really gives us a cue for classification by conduct in our institutions. Most punishment is practically unnecessary, if the small group really responsible for infractions, and largely through no fault of their own, is removed from the population as a whole and treated separately and by different methods. Compared with this method, all those recorded in the last hundred-odd years of prison history seem futile.

7. BY CRIMINOLOGICAL FACTORS

And this brings us to the next principle of separation, that based on criminological differences. Under this category we are limited practically to the matter of insanity and feeble-mindedness, and our history is brief and succinct. Legal provision had been made from early in the history of

the state for the removal from prisons of those who had become insane but no separate institution was provided until 1859. The problem, in most of the institutions, resolved itself therefore to the temporary assignment of such persons until their removal could be effected. The laws of 1828¹ provided for the removal of insane convicts from the State prison by a keeper of the prison to a private lunatic asylum of New York City, if reasonable contract for his maintenance there can be made. Further and more detailed procedure was provided for in the Laws of 1847:²

... if the inspector or the warden or chaplain of the prison shall have reason to believe that any convict confined therein is so far insane as to be dangerous or an unfit subject for prison discipline, such inspector or warden or chaplain shall report the same to a justice of the peace and two practising physicians residing most contiguous to such a prison . . . they shall immediately issue a certificate of their opinion . . . to the warden of the prison, whose duty it shall be to cause such convict to be immediately removed to the State Asylum at Utica.

Of course this referred to clear cases of insanity only. To all intents and purposes the present laws cover no more ground. While the necessity of segregating the insane in the prisons does not apparently exist, there are a sufficient number who would by more careful tests be found insane and whose separation along lines pointed out in connection with the Elmira Reformatory would be a great advantage to the prison and more just to the inmate. Our penal institutions are cluttered with inmates more fit for hospitals, but not included within the narrow limits of the legal definition of insanity. A more pressing need of institutional segregation is presented by the needs of the feeble-minded.

¹ Revised Statutes, part iii, chapter iii, title ii, article iii, section 72.

² Prison Law of 1847, section 98.

There are a great many of these, possibly a fourth of the entire prison population. The problem was practically unrecognized in its present form before the end of the nineteenth century. In recent years there has been some segregation of the feeble-minded. Separate cottages are provided for them at Industry, a separate cottage at Bedford. But a really thoroughgoing separation from the general institutional population is hardly begun, and the chances for the immediate future are rather poor.

8. BY PHYSICAL CONDITION OF INMATES

The temporary separation of the insane and the separation of patients with contagious diseases during the period of the disease may hardly be considered as classification by physical condition. The institution of a quarantine period for all inmates upon admission has been the nearest approach to classification of this kind, but has had very limited application. There does not seem to be any mention of quarantine in the early period of prison management. At present quarantine is practised in the women's reformatories and the juvenile reformatories only. It has been frequently recommended for adult institutions, including the State Prison, but thus far with no results. There has been some talk recently of introducing it in the Elmira Reformatory by setting aside a section of one of the cell blocks; and some attempt was made at Sing Sing as the result of the development of self-government: for a brief period after admission of new inmates they were not to be admitted into the self-governing body and during the same period they were to be kept separate in semiquarantine. On the whole this represents the extent of the use of quarantine in penal institutions.

Somewhat more attention has been paid to the separation of those infected with venereal diseases or tuberculosis. In some institutions, notably in the reformatories, they are

assigned to the hospital. In some of the prisons they have been grouped together, especially in recent years, as the "invalid gang", and kept separate from the rest of the population to some extent. Little precaution is taken with this group to prevent the spread of infection. Thus, often the convalescents from ordinary disease and the tuberculous and those with venereal diseases have been assigned to the same "invalid gang" and but in few cases have they been kept separate from the general population in mess hall or chapel. In fact, there has been considerable negligence even in the matter of preventing the "doubling-up" of the members of the invalid group with healthy inmates. In the indictment of Warden Kennedy of Sing Sing Prison not long ago, a great many points relating to the "doubling up" of individual prisoners of good health with persons suffering with either tuberculosis or a venereal disease were included in the charges made. A little more attention is now paid to this subject. In the State prisons there has gradually developed the custom of transferring all prisoners suffering with tuberculosis to Clinton Prison where special treatment has been given them under the able direction of the resident physician, Dr. Ransom. As a result of repeated recommendations, the New York Penitentiary on Blackwell's Island has set aside a separate section for the syphilitic patients. Their dishes are kept separate and they are fed outside the mess hall. In the Department of Correction of New York City there has been a more or less desultory separation of the tuberculous, who are transferred to Hart's Island and to a certain extent separated from the rest of the population.

The State reformatories for women have perhaps done more than any other institutions towards the development of reasonable classification and separation on the basis of medical findings.

However, it is hardly an exaggeration to say that the

elementary principles of segregation in accordance with accepted medical standards and the segregation of special groups of inmates with contagious or infectious diseases are hardly as yet carried out in more than a few scattered institutions. No state authority has imposed a uniform requirement in this respect, and such local standards as have been adopted by city health boards and enforced in respect to private establishments have been consistently neglected in respect to the penal institutions in their midst.

9. BY RACE OR COLOR

Fortunately, the race or color question has not at any time been acute in this State. The separation of white and colored has never been acknowledged as a necessary principle of prison administration, and in institutions for male prisoners there is practically no such segregation of which the writer knows. The question has arisen in connection with the women's institutions only. In some of these, white and colored have been kept separate, notably in the big institutions like the New York City Workhouse. Some institutions, like Bedford, deliberately chose to disregard color as a basis of classification, while at Albion and Hudson separate cottages were assigned to colored inmates. The pressure for separating them has been increasing of late years. This has been due not to political or social conditions but to the recognition of the development of peculiar pathological affinities in women's institutions between the colored and white inmates. These relations have caused the most serious of the disturbances in those institutions. They are probably the most serious problem for executives in women's prisons and reformatories. While little is said of them in public, they are uppermost in the minds of administrators. The situation may lead to the necessity of entirely separating colored inmates of female institutions.

from the white inmates. Such a change, while not eliminating the complications of homosexuality, will undoubtedly bring them within possibility of control.

10. BY MISCELLANEOUS FACTORS

Special problems arising or recognized from time to time have necessitated new classifications, and new segregations. Thus, the presence of mothers with babies in the women's reformatories has led to the designation of separate cottages for such inmates, both for the purpose of providing better care for the children and for the preservation of discipline, for the special privileges necessarily accorded to mothers for physiological reasons, constituted grounds for dissatisfaction on the part of the other inmates. In the first women's reformatory at Hudson, the hospital was at first used for this special group. Later a separate cottage was built for them. Bedford has a special cottage and so has Albion. At first there was some reluctance on the part of the administration about assigning such separate quarters because it might be interpreted as acquiescence in the policy of counties to render reformatories to some extent lying-in-hospitals. Children may by law be retained with their mothers until they become two years of age only, and must then be placed out by the Board of Managers.

The separation of returned parole violators has also been a special problem. Elmira Reformatory has been assigning them to Napanoch. The women's reformatories have generally assigned them to the same building in which first admissions and disciplinary or semi-disciplinary cases are held. At Industry such returned cases were considered practically disciplinary cases and were assigned to the punishment cottage, and, until recently at any rate, have helped to complicate the problem of discipline, serious enough in itself. No rational method has yet been evolved in conformity with

facilities available for the assignment and treatment of returned parole cases.

II. BY LABOR ASSIGNMENT

Practically all the above principles of classification and segregation in institutions have been either spontaneous or carried out under pressure. They depended upon either the intelligent and progressive character of the institution executive or upon pressure from outside. In some cases there were legal provisions to back such pressure, while in other cases it was exerted unaided. There is one type of classification, however, that has been exercised independently of any other factors. That has been the distribution of inmates in accordance with their labor assignments. This is purely a mechanical arrangement for the convenience of the prison administration. Thus the kitchen gang, mess-hall gang, industrial gangs of the various shops would be assigned some definite section of the cell house, and individual inmates would depend upon their labor assignment for assignment into a certain group or section of the institution. And if their work were changed, they would automatically be moved from the sleeping quarters they occupied at the time to another section allotted to the inmates constituting their new occupational group. It would hardly be necessary to mention this principle were it not for the fact that it has militated against the introduction of other more important principles of classification. The prison executive or in most cases the deputy or principal keeper feared any interference with this very simple method of distribution requiring next to no application of intelligence in its formulation or execution. The average institution today will present to the visitor this principle of distribution and it is as effective now in preventing the introduction of other principles as it has been heretofore. The slight inroads upon it by

quarantine and the segregation of infectious cases have been made possible largely by the fact that such separate groups could be constituted a separate labor gang or idlers' gang. In the assignment to the particular shop or labor gang, again, matters of convenience and of institutional advantages are uppermost rather than any solicitude for the inmates' welfare. An additional principle very generally valid is that of security. Thus, in the assignment of men to road camps or branch prisons without adequate means of safe-keeping, the remaining term of service as indicating the chances of escape receive the greatest consideration. If the inmate has a warrant lodged against him, his chance for assignment to a farm or road camp or to teamster work or to any work that might take him outside the walls or remove him from strict supervision are very slight. In transfers within the Department of Correction in New York City, sending any inmates with long terms or with warrants or retainers, outside the walled institution is studiously avoided. Men are picked out for their assignments with little or no regard to any principle of classification other than that of institutional advantage.

SEPARATION OF CLASSIFIED GROUPS

When, upon any principle, inmates are classified and the different groups separated, the extent of their segregation depends upon the construction of the institution. In dormitory institutions it is almost impossible to carry out any plan of classification without either overcrowding some dormitories or undermanning others. In cell institutions again the same difficulty is found because of the impossibility of partitioning off any section of the cell-blocks except by a permanent wall, which would necessitate the creation of sections the size of which would be rigidly determined. Perhaps the kind of institution that most lends itself to the

realization of any classification by the actual distribution of the inmates in accordance with it, is the institution of the cottage type. It is in fact, in these institutions that we find it carried out to the largest extent. But no institutional type of construction can carry out any system of classification, if overcrowded, and overcrowding has been one of the most persistent evils in our prison history. Beginning with the first State prison, continuing with the later State prison, with county jails, penitentiaries, Elmira, women's reformatories, the New York City institutions, the evil of overcrowding has been a constant factor and has helped disturb discipline, classification, efficiency in labor, sanitary standards, and the spirit of the executive staff. Even the new Westchester County Penitentiary, the latest word in prison construction, permitting of great scope of institutional classification, may, if it is unduly overcrowded, fail just as miserably to carry out its principles of classification as the worst constructed institution, such as, for example, the New York City Workhouse on Blackwell's Island.

CHAPTER V

CARE AND CUSTODY

PHYSICAL PLANT: LOCATION, CONSTRUCTION, SIZE, SECURITY

THE matter of classification to which we have devoted so much attention has represented one of the greatest interests of penologists throughout the past one hundred years. But it has, on the whole, not consciously concerned the prison inmate. He has not troubled himself much about classification even when it touched his health, unless in imitation of the tirades on the subject on the part of prison reformers. The prisoner's interest has been mainly in three chief aspects of prison administration, namely, physical care, discipline, and labor, in the latter two more in a negative sense. The public on the whole has shared the prisoner's attitude, chiefly because those three aspects represented the things most easily recognized by the uninitiated and most directly arousing public sentiment.

Two main categories of care and custody present themselves:

1. The physical plant of the institution.
2. Living conditions and personal comfort of the inmates, including the more vague considerations of inherent personal rights of prisoners.

PHYSICAL PLANT

The physical plants of institutions have been generally provided by bodies other than those upon whom devolved the

duty of administering them. A great many of the shortcomings of institutions may be attributed directly to the inexperience or indifference of those bodies. Unfortunately the executives have not in all cases done their utmost to rectify errors committed by the former. The method has been, usually, to appoint a commission or a series of commissions, whose powers, varying in extent and completeness, generally included at least the location and purchase of a site, and the preparation or approval of plans for the construction of buildings. The very first state institution, built in 1796, was established in that way. The same was true of the second State Prison, at Sing Sing, of several of the county penitentiaries, the Elmira Reformatory, the State Reformatories for Women. In some cases the commission bearing responsibility for the actual establishment and erection of the institution was a separate body, succeeding the one designated to select the site. The tendency at present is away from this method and towards the utilization of already existing public bodies, with perhaps the assistance and advice of outside experts. The new State prison at Comstock, for example, has been erected almost entirely under supervision of the state architect. The latest State Prisons now under construction at Sing Sing and Wingdale represent a combination of methods, in which a special commission, including certain state officials *ex-officio*, is entrusted with the task of the erection of buildings. In New York City there seems always to have been a certain amount of responsibility left with the public officials who have maintained control at least over plans submitted by architects.

LOCATION

The most important function in establishing an institution is undoubtedly the location of the site. There are many

essentials in the choice of site which would seem to be elementary, but which have nevertheless frequently been disregarded by the authorities. These essentials would now be considered as follows: dry, healthy location, reasonably temperate climate, plentiful and palatable water supply, possibility for satisfactory sewerage and drainage, abundant natural resources either in quality of soil or in mineral products, or both, accessibility to lines of transportation at reasonable cost, proximity to populous community, availability of material for construction, and pleasant scenic situation. Almost all these essentials have, from time to time, been neglected in some of the institutions; occasionally several of the essentials were disregarded in the choice of the same institution. Prominent examples may be quoted *ad libitum*. The exceedingly damp location of the Sing Sing prison is a well-known instance. At New Hampton Farms two years after the establishment of the institution there was not yet water enough for the ordinary purposes of the reformatory, such as bathing and scrubbing. The new training school for boys contemplated by the State to replace the House of Refuge was located within New York City's water supply system and the site has had to be abandoned. In respect to the quality of soil also errors have been committed. Of the one thousand acre farm at the Great Meadow Prison a comparatively small area is really cultivable and the Erie County Farm at Wende may require more treatment than the products will ever be worth. The agricultural value of the Bedford site is especially low. Transportation facilities have not been sufficiently regarded in such cases as the choice of the Clinton Prison site and in the choice of the Tramp Farm at Beekman. The fact that most of the prisons were built at a time when the movement for open air employment had not obtained a secure footing is responsible for the fact that most of our penal institutions have

been and many still are within limits of cities and towns. The first prison in New York, the Auburn Prison now, several of the county penitentiaries, and practically all the jails are so situated. Difficulties of soil drainage have also in some instances been overlooked. Thus the Wingdale site has suffered from the presence of stagnant water, and a part of the State Agricultural School at Industry is regularly under water every spring so that access to one or two cottages may be obtained by rowboats only.

Of late years more attention has been paid to all these matters, including the natural beauty of the site. The Bedford Reformatory, the Albion Reformatory, Great Meadow Prison, Matteawan, New Hampton, all present pleasing views. There are very few, if any, really damp prisons other than Sing Sing and almost all prisons have fair access to transportation facilities.

FROM CITIES TO FARMS

There has been lately a very definite tendency to locate institutions outside of cities, and a number of institutions originally established within city limits have since been removed. The discontinuance of the original State prison in New York City may not be attributed to this tendency; nor the discontinuance of the Kings County Penitentiary, which was probably more a political deal than anything else, although accounted for by its backers as a desire to extend residential facilities in that part of the city of Brooklyn. The New York City Reformatory for Misdemeanants has gone from Hart's Island in New York City to New Hampton, Orange County; and the Western House of Refuge has moved from Rochester to a 1400-acre farm at Industry. In the private reformatories the same tendency is perhaps even more marked. The Juvenile Asylum (The Protestant Reformatory for Boys) has gone from New York City to

Chauncey. The Catholic Protectory has begun to spread out by establishing a branch at Lincolndale. The Magdalen Home has traveled to the northernmost end of the city and will be entirely removed to the country "as soon as its finances permit it." The Jewish Protectory, organized after the back-to-the-land movement had begun, was started directly in the country, as was the Cedar Knolls School for Jewish Girls. Institutions already on farms are spreading out by purchasing more land and even those still in cities are attempting to establish branches in the country. Thus Great Meadow, Elmira, Napanoch, Industry and Bedford have been purchasing or leasing adjacent lands. The Erie County Penitentiary has established a farm branch, and the Auburn Prison is looking for available farm lands in the neighborhood and has already leased some acres. Thus the movement is not only from city to farm but from small farms to larger ones.

CAUSES OF LOCATION

The general causes that have accounted for the location of penal institutions have been varied but more or less constant:

First, proximity to some other institution, especially to courts. Practically all the county jails have built adjacent to the county courts, either within the same building or close enough to permit passage from one to the other through a protected corridor. The tardiness with which county jails have followed the general trend to the country is largely due to the fact that they are composite institutions, serving different groups, the most important of whom are trial prisoners required to be near the court.

Second, the matter of districting. State institutions have generally been established in such a way as to serve conveniently for the different parts of the state. The original state prisons were intended to be two in number, one in New

York and one in Albany. The New York Prison was built, the Albany Prison plan abandoned. The next prison was located at Auburn and was to serve the western part of the State. Later Clinton was established and by subsequent legislation was assigned to serve for the district in which it is located. Powers of transfer between these institutions were given as a means of equalizing the institutional population, seventy per cent. of which came from New York City. The choice of Bedford and Albion in their respective localities was based on the same principle; similarly, the House of Refuge and the Western House of Refuge, Elmira and Napanoch.

Third, it is very likely that many particular sites were determined upon by political manoeuvre in order to make possible favorable sale of lands by friends of office-holders and politicians. There are several instances in which this accusation has been definitely made, as for example in connection with the Great Meadow Prison where an apparently unwarranted price per acre was paid for land, a considerable part of which could never be cultivated.

But in most cases, especially of the earlier institutions, the natural impulse seems to have been to build institutions in the locality where they were needed. Thus the county penitentiaries in Buffalo, Rochester, Syracuse and Albany, most of the county jails, the House of Refuge and the private institutions were largely located where the movement for their organization had originated. A serious and increasing difficulty in locating sites has been the securing of enough contiguous parcels of land and very often also the fact that the maximum price is fixed by law.

ARCHITECTURE

Many extraneous and irrelevant factors have entered into the construction of prisons and have detracted interest from

the really necessary matters of prison administration. Thus the rather general sentiment in regard to all public buildings that they represent the wealth, dignity and pride of the community, has been responsible for much elaborate and expensive architecture which drew the money from where it was needed into useless ornamentation. Not that beauty in prison buildings is undesirable, but that it was obtained in a style unnecessarily expensive. The peculiar association between prisons and fortresses, probably supplied by the historical background of European bastiles, and the assumption that weight and thickness of walls constituted security of prisons, may also have been responsible for some elements in prison architecture. These are now gradually being eliminated but were prevalent enough to be very severely criticised by Wines and Dwight in their work on Prisons and Reformatories of the United States and Canada, in 1867.

DORMITORY TYPE FIRST

The most important factor in determining the architecture of prisons has been undoubtedly the prison system or theory underlying its administration. We have had three fairly distinct styles of prison construction from the standpoint of the housing of inmates, namely the dormitory type, cell type and cottage or group type. The virtues of these types are still a subject of controversy, but not nearly as bitter as in the early part of the nineteenth century. The dormitory type of prison construction was the earliest in the state. The first prisons in the City of New York, as well as the first State Prison were of that type. It is not too much to say that the evils of the dormitory system were responsible for the whole controversy between the Auburn and Pennsylvania systems occupying the second and third quarter of the last century. The commingling of all types of prisoners in unsupervised dormitories upon assignment to their re-

spective rooms with little or no reference to character or age, brought about a state of moral degeneracy and industrial inefficiency in the prison, especially in the State Prison in New York, that made any change in the system seem beneficial. The controversy between the separate confinement principle and the dormitory principle was evident long before the Pennsylvania Prison was erected. We have referred briefly to the experiments conducted by the inspectors of the New York Prison to determine the value of solitary confinement by assigning two inmates in 1822 separate cells for six and three months respectively. The fact that these two inmates emerged at the end of the periods worse in every respect than upon their admission seemed proof sufficient to the inspectors of the invalidity of the separate confinement plan. It apparently did not occur to them that the value of separate confinement depended upon the manner in which it was carried out, and that separate confinement was not necessarily solitary confinement. At any rate, when the construction of the Auburn prison was authorized the plan was still modeled largely on the Newgate dormitory plan.

FIRST AUBURN BUILDING

In 1816 the Auburn Prison was begun, and the southern wing was completed by 1818. It contained sixty-one cells and twenty-eight rooms, each of which afforded room for from eight to twelve convicts.¹ The facilities soon became insufficient, requiring doubling up in the cells. As a result, in 1819, the erection of a new building was ordered. By this time the evils of the dormitory system had shown themselves, so that the commissioners adopted the cell-plan of construction for the new wing. But the cell system turned

¹ Beaumont and Toqueville, translated by Lieber, p. 4. Also report by Gershom Powers, 1828.

into *solitary* confinement. The new northern wing, was finished in 1821. "Eighty prisoners were placed there and a separate cell was given to each. This trial from which so happy a result had been anticipated was fatal to the greater part of the convicts; in order to reform them they had been submitted to complete isolation. . . . The unfortunates on whom this experimentation¹ was made fell into a state of depression so manifest that their keepers were struck with it Five of them had already succumbed during a single year One of them had become insane; another, in a fit of despair, had embraced the opportunity when the keeper brought him something to precipitate himself from his cell, running the almost certain chance of a mortal fall (Finally) the governor of the State of New York pardoned twenty-six of those in solitary confinement; the others to whom this favor was not extended were allowed to leave the cells during the day and to work in the common workshops of the prison. From this period (1823) the unmodified isolation ceased entirely to be practiced at Auburn."² The investigators (Beaumont and Toqueville) were unable from this point to follow exactly the course of events. In 1824 a commission, consisting of Allen, Hopkins and Tibbets, was directed by the legislature of New York to inspect the Auburn Prison and rendered a very favorable report. "We see the renowned Auburn system suddenly spring up and proceed from the ingenious combination of two elements which seemed at first glance incompatible, isolation and reunion. But that which we do not clearly see, is the creator of this system, of which nevertheless some one must necessarily have formed the first idea."³ In

¹ The other prisoners, retained in the old wing, continued on the congregate plan of working in shops.

² Beaumont and Toqueville, p. 6.

³ *Ibid.*

other words, by the trial and error method, the "Auburn System" was almost suddenly discovered, and was in vogue before its sponsors knew what had happened.

THE NEWGATE PRISON AT GREENWICH, NEW YORK CITY

From this time on until the erection of the New York City Workhouse on Blackwell's Island, and the construction of temporary quarters at road or farm camps, we see no return to the original dormitory system embodied in the first State Prison of New York. That prison may be considered the last of its kind in this state. As described by a prisoner in 1822¹ the main prison was an extensive structure of the Doric order at Greenwich about a mile and a half from the city hall, occupying one of the most healthy and pleasant spots on the banks of the Hudson.² It was built of stone with the windows protected by iron bars. It had two stories, each, about 15 feet high, a basement, and slate roof. At the center there was a cupola with bell, the main facade fronted on Washington Street and was surmounted by pediment. The front of the building was 204 feet long. There were four wings extending backwards from the front to the river. The building and yard together covered some four acres and were enclosed by stone walls 23 feet high at the river and 14 feet at the front. There were 52 rooms twelve by eighteen feet, accommodating eight prisoners each. The center of the building was occupied by the offices of the inspectors, agent, keeper and assistants. The north wing contained a chapel with galleries and in the south wing there was a dining hall. Above the dining hall were large apartments allotted to prisoners working at shoe making; a hospital was located on the second

¹ Cf. chapter iii.

² *Inside Out.*

floor of the northwest wing and two kitchens for the use of prisoners were on the ground floor of the south and north wings; adjoining the end of each wing there was a building of stone two stories high containing cells on the upper floor for solitary confinement for cases deemed to require severe treatment. These cells were eight by six feet high with windows eight feet from the floor. In the yard there were workshops built of brick "spacious and airy" for all except the shoe makers. There were also a saw pit, cellar, ice house, smoke house, fire-engine house, pumps and fuel storage. The cells for solitary confinement were a part of the plan of the Walnut Street jail in Pennsylvania after which the New York prison was modeled and were to be used either for cases designated by the inspectors or, mostly, when the sentence specifically called for confinement in solitary cells.

There was really no controversy within the State of New York after the "thirties" as to the type of prison construction. The dormitory plan had been unanimously abandoned even before the appearance of the Pennsylvania plan; the latter in its entirety was never accepted for convict prisons, and there was no alternative to the Auburn system when once introduced. Unfortunately, with the Auburn system went the Auburn cell and thus for the rest of the century a model was set for the size of cells which has held its own since, and has been largely responsible for the exceedingly unhealthy housing conditions of our prisons.

While the dormitory system was gone so far as the state prisons are concerned, it lingered for a long time in other institutions. In some cases the claim has been made for the dormitory system as a better plan, especially for children's institutions. The House of Refuge was conducted on the dormitory plan on its first site at the arsenal, but the new buildings erected in 1826 provided separate rooms of fair

size. They were still called dormitories but only in the sense of being sleeping rooms. At the New York Penitentiary (at Bellevue) for a long time certain parts of the institution, especially the female department, were conducted on the dormitory plan. There was some danger at one time, that its new home on Blackwell's Island would be built on the same plan but, probably through the intervention of the Boston Prison Discipline Society, the separate cell system of housing was finally adopted. The worst remnant of the old plan is probably the present New York City Workhouse on Blackwell's Island, built in 1854. The men's department at that institution contains dormitories varying in capacity from four or six prisoners to thirty-five. In the women's department practically all cells are of the smaller type with capacity for four to six prisoners each. The number of such separate rooms or dormitories on the men's side is sixty-four with a total capacity of 726. On the women's side there are 133 sleeping cells available, with a total capacity of 764. This makes a total of 197 separate sleeping compartments which of course cannot by any stretch of imagination be properly supervised.

Outside of these few institutions the separate cell plan has been carried out in all prison construction since Auburn. The female prison at Sing Sing built in the thirties, the county penitentiaries, male reformatories and most of the county jails have been built on the cell-block plan. *It is to be understood that this meant separate confinement at night only with the use of congregate workshops and dining rooms by day. Solitary confinement by day and night without communication between inmates had been definitely given up as a result of the experience at Auburn, but continued to be advocated for county jails throughout the period of prison reform up to date.* An act was actually passed in 1808 (chapter 155) directing boards of super-

visors of counties "to prepare as many solitary cells in the county jails as the court of common pleas may direct." In recent years there has been somewhat of a revival of the demand for dormitories based mainly upon considerations of economy in construction and partly at least on the theory that the ventilation of dormitories is of necessity superior to that of cells and that they also give opportunity for normal social intercourse between prisoners (granting, of course, that the inmates of any particular dormitory are of a properly selected type). As a kind of compromise with this movement the latest prison, the Westchester County Penitentiary, has left some parts of the building without cell partitions, thus providing a few dormitories. But the executive of the institution is in agreement with executives elsewhere, notably of the dormitory institutions of New York City, in disapproving of the dormitory plan for adult prisoners.

COTTAGE OR GROUP PLAN

The cottage plan, although first applied in this country in connection with delinquent children, through the establishment of the Juvenile Reformatory in Ohio¹ in 1854 obtained a foothold largely through institutions for dependent children. In denouncing the congregate system for orphanages the advocates of cottage institutions had a definite substitute which approximated the family plan. Those who opposed the congregate system in penal institutions, however, had generally devised no constructive plans for a substitute. They had in mind rather the classification and separation of inmates at work, meals and at other times, rather than the construction of definite units in which homogeneous groups would have an opportunity for free social intercourse.

¹ Modelled largely on the continental institutions at Mettray and Das Rauhe Haus.

This interpretation is borne out by the emphasis on providing separate institutions for the different types as well as the separation within institutions. When the cottage plan was at last adopted by the more courageous spirits in prison reform it took two slightly differing forms—one, an outright cottage plan for women and children and another, the group plan for institutions for adult males. Only the very latest plans for State prisons include any real cottage or group idea for adult prisoners. This is found in the tentative plans prepared by the Prison Association of New York (with Mr. Alfred Hopkins, architect) in 1916, in connection with the preparations for the building of the new State Prison. The plan included, besides the group system for the institution proper, a series of some eight or more honor cottages outside the institution walls to be conducted on much the same plan as cottages in women's and children's institutions. Mrs. Lowell in including the cottage system, as part of her plans for the women's reformatory (1879-87) did so primarily "in order to facilitate proper classification and to provide the opportunity for a beneficial personal relation between officers and inmates and for effective training in domestic work."¹ Although her plans were but half-heartedly carried out, in that the first four cottages of the original plant at Hudson were quite overshadowed by a large prison building, nevertheless it represents the first plunge of correctional institutions into the cottage plan. The four cottages at Hudson had a total capacity of 96 as against 150 in the prison building. The mistake of having a "prison building" was repeated at Bedford in 1900, although its evils had been recognized soon after the establishment of the first reformatory at Hudson. The cottages at Hudson were themselves decidedly defective.

¹ Carson, *op. cit.*, chapter iii, Physical Plant.

Planned merely for housing purposes, they contributed little to the reformatory system; they were difficult to supervise, did not contain a common living room and necessitated the utilization of the narrow hall for such social intercourse and recreation as was granted.¹ Better cottages were built in 1893, accommodating 37 inmates and including a living room. At Albion the first four cottages were two-story buildings instead of three-story as at Hudson, thus improving possibilities of supervision, and the prison building was planned so as to make communication between inmates more difficult, if not impossible. But still the prison building was included and the cottages were of lesser importance. The prison building at Bedford, built despite the protests of the State Board of Charities, has since proved to be the greatest stumbling block in the educational system and discipline of the institution. In 1899 part of it was altered by throwing two cells together and rendering them more like rooms, but the original damage could not be quite undone. Not until the latest cottages, built within the last few years, has the idea of social training and normal family life been sufficiently carried into the cottage idea to overshadow the original bare purpose of classification only.

The next cottage institution within the field of delinquency after the establishment of the women's reformatories, was the Juvenile Asylum now called the Children's Village, which moved from the city to its new home at Chauncey about 1904. The architectural competition for the new site of the institution called for practically a complete village with forty separate cottages, a chapel, gymnasium, school house, office building, central kitchen, laundry, administration building, hospital, industrial building, and some minor buildings. The Jewish Protectory at Hawthorn followed,

¹ Carson, *op. cit.*

with the Industrial School at Industry and the branch of the Catholic Protectory at Lincolndale.

GROUP UNIT SYSTEM

The long and somewhat vague agitation for the abolition of the congregate system in the State prisons bore no real fruit until very recently when the group system as a modification of the cottage plan applicable to adult penal institutions was more accurately defined. Briefly, the group unit system consists, for a State prison or reformatory, in the construction of a series of separate buildings in place of the original big cell block traditionally developed and almost universally found in American prisons. In the tentative plans proposed by the Prison Association for the new State prison there are some eight such separate buildings for the population as a whole, a separate building for the disciplinary cases, another for the feeble-minded, in addition to special provisions for hospital cases. Each building is to be so constructed that the floors are separate, thus providing a separate unit on each floor of each building; all the important factors determining classification may thus be carried out (the outside cell plan was included as a part, though not essential, in this group unit plan). The plans were not adopted by the State in full but the general principles were carried into the State architect's plans for the new prisons. A very close approximation to the plan was adopted for the new Westchester County Penitentiary, which is now in operation, consisting of four separate buildings for the housing of inmates, and providing the means of segregation as above described. As part of this plan a receiving department connected with institutional quarantine and with facilities for physical and mental examination and classification is included.

SOCIAL CONTACT IN COTTAGE AND GROUP UNIT PLANS

It is important to note that the agitation for smaller groups based on accepted principles of classification has now absorbed another idea, as important, if not more so, than the classification proper, namely the approximation, so far as possible, to normal life within the institution. That means an extension of social contact between inmates, principally for recreation. Such contact not only presents undoubted advantages for training and for the elimination of the abnormal effects of prison life but, under the system of classification and segregation of groups does not carry the danger of moral and physical contamination so often described as the paramount sin of the congregate system.

ARCHITECTURE AND GENERAL PRISON SYSTEM

It is because of the inseparable relation of prison architecture to prison systems that we find so much attention paid to construction and type of prisons in the last one hundred years. The emphasis in the advocacy of particular types is not so much upon purely physical or sanitary advantages as upon the implied system that the proposed plan would carry with it. Several times in the course of the latter half of the nineteenth century and again within the brief period of the twentieth century, the Prison Association made efforts to present architectural plans for the purpose mainly of calling attention to some general system of administration and treatment. The earliest attempt of this kind accompanied with carefully elaborated sketches and ground plans appears in the report of the Prison Association for 1849. The close relation between prison architecture and prison system is so fully brought out in the report, that we present important sections of it in full:¹

¹ Prison Association, 1849, p. 384 *et seq.*

We propose that our prisons should in future be constructed in the radiating plan, so that each wing shall diverge from and open into a common center, which, if kept in view in regulating the internal construction of the building, becomes a point of observation, commanding a view of the whole and from which access in all directions is afforded. The wings may vary in number—from two to six—four perhaps would be a better limit, and may be constructed from two to four stories high. Those wings shall in part be adapted to separate, and in part to congregate government, excepting in houses of detention, where entire separation is in our opinion alone admissible. The center building, besides serving as a point of access and observatory, should provide accommodations underneath for a kitchen, and overhead for a hospital. The ground underneath the central building should be deeply excavated, and such excavation should extend to a considerable distance over the adjoining grounds, and adjacent to each wing, to give air and light to the basement; better perhaps to have the basement entirely above ground. The arrangements for the basement of the prison should be such as to provide bath rooms, cleansing rooms, store rooms, etc., as well as the most ample accommodations for cooking, and the easiest method of distributing the food to the different portions of the prison in which it is required. The kitchen should be immediately connected with the store rooms, bathing and reception cells, wash room, clothes room, drying rooms, coal bins, heating apparatus, etc., etc., so as to economize the labor and fuel of the establishment. The wings are to be constructed so as to permit a general inspection and supervision of the whole building from one point, embracing not only the cells, but the dining hall, workshops, and perhaps chapel; for this purpose on each side of each corridor near the central observatory, tables and seats are to be provided for feeding the prisoners; beyond these are the cells opening inwards towards a central hall, and in the congregate portion of the prison beyond the cells, the workshops are placed. The cells are to be made sufficiently large to admit of separate confinement, if it should

be deemed advisable, to introduce it now or to fall back on it at some future period, and by a division when it becomes necessary, effected by the means of corrugated iron plates, as in Portland Prison, England, or by a temporary brick wall, they can each be divided at trifling expense into two cells of ample capacity for congregate imprisonment.

These are each supplied with water and all necessary appliances; to be lighted by two windows, and heated by warm air thrown in at the top of the room and drawn off at the bottom. It is proposed to introduce the Pentonville method of warming and ventilating, with such improvements as experience has suggested. The part of the wing beyond the cells in which the workshops are to be placed, is to be completely floored over, and divided in the center by a board partition, about five feet high, running from the point nearest the cells back towards the wall, leaving between it and the wall sufficient space for the desk and seat and keeper in charge, and the whole to be enclosed from the other parts of the wing by glass doors, which can be opened or closed at pleasure, thus shutting off the noise, but allowing a central inspection. The windows in the workshops must be large, admitting both light and air, but protected by gratings, and in front of the workshops there must be a tackle and fall, by which the raw material or manufactured goods can be raised from or lowered to the store rooms in the basement, as may be required. At the hours for eating, the prisoners, at a given signal in each workshop, quit their employment and march along the corridor in single file to the dumb waiter on their gallery, where they find a server, with their plates, knives, forks, spoons, pepper, salt, vinegar, etc., which they carry to their seats, eat what they choose, and, after sufficient time, another signal is given, when the prisoners rise, and in reversed order, carry their service containing their plates, etc., and re-deposit them on the waiter, then wheel and pass along the gallery, back again to the workshops. In this manner no time is lost, either in setting or clearing away the table, and no persons engaged especially for that business. In

the wings, which are devoted to separate confinement, the hall and galleries run the whole length of the wing, as will be seen in the diagram, and the whole of it will be occupied by cells, and the prisoners, instead of feeding together, will be supplied from the dumb waiter with their servers by a person or persons expressly provided for the purpose, and they will, in a similar manner, be supplied with raw material for their work, etc. In the central observatory there will be an elevated platform, of greater or less height, according to the height of the wing, in which will be a standpoint of observation, at which all the prisoners can be seen by simply turning the head. This may also be used as a position from which the prisoners may be addressed while at their meals. The hospital of the prison is placed in an additional story, directly over this part of the building, and is intended to occupy the entire floor of the upper part. It will have two entrances from nearly opposite wings, and will be so arranged as to have each bed separated, by a partition, from every other so as to offer a distinct room for each patient, looking into the center of the building through a grated door, controlled by the attendants. The center room is provided with a light in the dome, and each bed room is to have a small window for ventilation. A chapel for those in separate confinement, may be constructed by a prolongation of the hospital over one of the wings, and so arranged as to prevent prisoners even becoming personally known to each other. This may be done by adopting the plans and precautions used at Pentonville, England, and if it is desired to assemble all the population of the prison in the chapel at the same time, it may be done by providing separate and distinct departments for each class. The plan which we herewith present has not been artistically drawn, and will, therefore, but imperfectly present our idea. It can only be considered as the great outline of a plan which must be filled up hereafter.

The plan thus proposed possesses the advantage, first, of providing a prison equally well calculated for either separate or congregate imprisonment. It places the two systems in juxtaposition.

position and enables us to form an accurate comparison of their merits. It enables us to adopt or discard either as the one or the other shall be decided to be superior, thus holding ourselves in a constant state of progress. In proposing separate confinement for first sentences, it offers the most undoubted advantages of the separate system, while, in retaining congregate imprisonment for a large portion of the inmates, and superadding a minute and attainable classification, it presents the congregate system in an improved shape. By the means it affords for dispensing with a crowd of hall boys and waiters, who are at present unproductive, for increasing and equalizing the hours of labor during the whole year, and for allowing the productive advantages of congregation, it admits of the greatest economy in its management. It enables the prisoners to be constantly engaged, either in work, study, instruction, sleeping, feeding, or other necessary occupations and thus preventing the ennui and the diseases created by idleness. In its introduction of more order and system—in its faculty for supervision—in opportunities for a complete and constant separation of classes—in its preventing the exposure of the prisoners to the changes of the weather, thereby promoting health, in its increased facilities for carrying on the operations of the prisoners, etc., etc., it seems to excel all other known plans. This is a brief summary of the advantages we expect to derive from prisons fashioned after the manner here sketched. If we have succeeded in presenting an intelligible view of our own conception, we hope to have impressed those who may have examined our plan with the idea that it is, at least, worthy of an experiment, especially as the experiment will cost but little, and the prison afterwards, will be of the first order, and, by a trifling expense, may be converted into either a congregate prison of the largest capacity, or into a separate prison, unsurpassed in its appliances for health and the ordinary operations of the prison. This advantage alone, we trust, will be sufficient to recommend the general features of our plan to the authorities of those new States where they are about to construct prisons and introduce

systems of prison government, and to those where prisons are already established, which may be found insufficient in size, or so dilapidated by age as to make a new erection desirable. Prisons erected on this plan will possess the important advantage of having the convict in congregate imprisonment under the constant watch and guardianship of the keeper. His whole prison life will be so adjusted as to be equitably distributed between labor, study, religious instruction, outdoor exercise, feeding and sleeping. By the use of the fat and the other oleaginous materials, which accumulated from the meats used by the prisoners, the prison may be lighted at a trifling expense with gas, and as the prisoners never need, and, indeed, are never expected to go off their galleries, except for yard exercise, they can be mustered at the same hour during all seasons of the year, and work the same number of hours. Their hours of study, a great desideratum, impossible to be attained under ordinary systems, can also be equally well arranged, so that the convicts need not, as at present, be left, in the winter season, more than half their time unemployed, shut up in a dark cell, with no one to control them and nothing to employ them.

Again in 1868 several plans were prepared for jails, station houses and a house of correction. A special committee consisting of Dr. E. C. Wines, John Stanton Gould, Mr. Sanborn, and Architect Gridley J. F. Bryant, presented a report, parts of which containing general principles or describing especially interesting features in the relation between architecture and administration are here reproduced:¹

In order to obtain a model jail, it is necessary.

1. To have an open lot, which cannot be overshadowed by contiguous buildings.
2. The site selected should not be stony; at least the stones accessible should not be large enough to be used as weapons of offense.

¹ Prison Association, 1868.

3. It should have good natural facilities for drainage.
4. It should be tolerably elevated, so that the fresh air will sweep through it unobstructed.
5. The jail itself should be so constructed that it can be readily supplied with an abundance of pure water.
6. It should not be too far removed from the court house, as this would increase the chances of escape in going to and coming from court at the time of trial.
7. It should not be too far removed from the compact part of the town or village where it is situated; so that help in case of rebellion or fire, may be promptly obtained. For the same reason, it should not be in the quarters of the worst part of the population, as they would be likely to aid the prisoners from sympathy with them. The respectable portion of the population will not object to the proximity of the jail, if it has a handsome exterior; and this is a good reason for some architectural embellishment of jails.
8. It should, if possible, stand north and south, so that the sunlight can enter the windows all day, on one side or the other. The part occupied by the jailer should face north and the end occupied by the prisoners should have the benefit of the southern exposure.

The prisoners in solitary confinement will be supplied with water and conveniences for washing and drinking in their cells, while those having access to the area will wash in a sink, to be provided between the windows, in the end of the octagonal room.

The stairs seen at the end of the cells, should be constructed without risers, which would conceal a prisoner from the jailer approaching from behind. "Avoid all hiding places" is a cardinal maxim in jail building. "Use no wood where iron or stone can be substituted for it" is another maxim of equal importance.

The greatest point of all in jail construction is to have the prison so arranged that a constant oversight of the prisoners can be kept up by the jailer without the knowledge of the

former. The passage P affords the most perfect means for the accomplishment of this object. A narrow slit, about one-sixteenth of an inch wide, is cut in the rear wall of the cell, which is beveled upward, downward and laterally, so that a person in the passage can see what a prisoner is doing in his cell at any moment, without his knowing that he is under inspection. Very little mischief can be done where this mode of examination or oversight is provided.

The two cells next to the guard room may be used for punishment cells. For this purpose, a wooden door may be hung outside the grated one, which, when closed, makes the cells perfectly dark. When confined in such a cell on bread and water, the most stubborn prisoners usually yield. These punishment cells should be provided with fans on the outside in the guard room, which can be worked from time to time by the turnkey, so that an abundant supply of pure air may be furnished to the prisoner under confinement.

One of the large cells may be fitted with an acoustic apparatus, consisting of a dome in the top of the cell, so curved as to reflect all sounds into its axis. From this a pipe is carried into the passage P where an officer can distinctly hear every word uttered, even in a whisper, by prisoners. In this way many secrets may be revealed, which will be found of the utmost importance in the administration of criminal justice.

The plan for a state prison recommended by the committee is, as a matter of course, based upon and conformed to the exigencies of the system of imprisonment commonly practiced in this country, and known as the Auburn or congregate system. The committee, however, feel no hesitation in expressing the hope that the system which has become famous under the name of the Irish prison system, with such modifications as may be suggested by experience and the circumstances and institutions of our country, will gradually work its way to the approval and general adoption of our countrymen.

In 1871 and 1872 further studies were made by the Prison Association, this time of jail plans only. No new principle

of criticism or radical changes in plans were submitted and the emphasis was more on the unsatisfactory manner in which the adopted principles of jail construction were carried out or kept up.¹

ARRANGEMENT OF BUILDINGS

It follows therefore that the construction of prisons involves not only the basic system of prison administration but also the more immediate problem of institutional routine and efficiency. The reports of 1849 and 1868 quoted show the necessary relation between the matter of separation of different groups, their proper supervision by the staff, and the institutional system. Most of the penal institutions have been built piece-meal. The buildings constituting part of the entire plan were rarely constructed consecutively within a sufficiently brief period of time to carry out a unified and consistent plan. Later changes and additions, necessitated sometimes by the expansion of the institution, sometimes by fires and sometimes by new ideas more or less independent of the history of the institution, have helped to render our penal institutions in many cases a scattered conglomerate of buildings satisfactory neither from the esthetic nor from the practical standpoint. Little objection seems to be recorded in this respect concerning the first New York Prison. But the later State prisons all seem to have suffered by this planless accretion. The Auburn, Sing Sing and Clinton prisons, the several county penitentiaries, a great many of the jails, and the women's reformatories suffered to a greater or less extent from haphazard distribution of buildings within the enclosure. Auburn is described by Wines and Dwight in 1867² as consisting of the cell blocks "and a number of brick, stone and frame

¹ 1871, p. 33 *et seq.*, and 1872, p. 104 *et seq.*

² Wines and Dwight, *Prisons and Reformatories*.

buildings used as workshops and for other purposes. . . . these latter being arranged without much regard to symmetry or order, diminishing by the irregularity of their location the facilities for observation, and compelling an increased force of keepers for this purpose." Of Sing Sing they say "there are sixteen workshops, most of which are of stone, scattered about the prison yard without the slightest regard to symmetry or convenience. By this haphazard distribution, the trouble and cost of supervision are much increased." Clinton Prison, which arouses their admiration in many respects, is still subject to the same criticism of having "numerous buildings necessary for the prison purposes—residences of officers, prison offices, chapel, hospital, mess room, cell building and many workshops, all of which are scattered about the premises in a very haphazard manner and without any regard to convenient inspection, or, as far as we have been able to judge, conveniences of any other kind." That the three most important prisons at the time (1867) should have called forth practically the same degree of criticism in respect to the arrangement of buildings throws a clear light upon the general situation of all prisons. If these institutions, upon which more thought was expended than any other group in the State, fell so far below par, one may imagine the conditions elsewhere. Perhaps the explanation may be summed up in the brief remark that prison executives have rarely considered the administration of their institutions as a science but mostly as the concomitant and necessary evil of holding a job, obtained by politics and retained mostly for gain. Often a disproportionate amount of the attention devoted to the physical plant of the institution has gone into the improvement of the residence, gardens and lawns assigned to the warden.

The arrangement of buildings of other institutions still

shows the same lack of organization for efficiency. Even in some of the modern buildings very serious errors in this respect have occurred. At the Bedford Reformatory for instance, the division between the campuses and especially the location of the four new farm cottages on the top of a hill some distance away, imposes upon the institution an undue burden of expense in fuel, light, road construction, transportation and supervision.

In the newer institutions, those that have had their plans formulated within the last two decades or so, we find a much better organization of the buildings. It is not clear whether any one specific model has been followed in this respect. Perhaps merely the fact that the importance of proper arrangement has seeped through from reformers and exceptional executives to architects and public officials may be responsible for the change. In these recent plans we find a very careful consideration of such essentials in the arrangement of buildings as the proximity of mess hall, kitchen, refrigerator, store room; hospital and receiving department; bath, laundry and store room for clothing. The Great Meadow State Prison at Comstock erected some dozen years ago (and not yet completed) gives a good example of careful planning. At the Elmira Reformatory original errors have been largely rectified as, for example, by the construction of the domestic building added to the plant within the last ten years. The House of Refuge which represents in its main features the work of the "fifties" is an unusually well arranged institution for that period and type.

The fundamental principles of the distribution of buildings in an institution are the following. First, the utilization of the enclosure so as to afford the best possible light and ventilation for all buildings; this includes the proper exposure for sleeping apartments, a feature that has often

been neglected. We find repeatedly cell blocks shutting out light from other cell blocks. Sometimes, when the original building had a fairly satisfactory north-and-south exposure additions were built on an east-and-west axis, presenting at least half of the entire cell house to the north where it receives no direct sunlight. The Penitentiary on Blackwell's Island and Auburn and Clinton Prisons may be cited as instances of this kind.

Second, ease of movement and supervision. There are certain standard movements of the prison population which take place at great frequency and for which the time consumed and the supervision required should be as little as possible. Such are, for example, the movement from cells to bucket dumps and wash rooms; the movement to and from shops, dining rooms, and chapel. The House of Refuge, Great Meadow Prison and the plans for the new prisons at Sing Sing and Wingdale are fairly good examples of the proper distribution of buildings. The plans proposed by the Prison Association in 1849 took full account of this requirement.

WALLS

The association of ideas that combines prisons with walls is perfectly legitimate on the basis of the entire prison history of the State. The first State prison, built in 1796, was surrounded by a wall varying from 14 to 23 feet in height. The latest plan for prisons still includes walls for such parts of the enclosure as are not bounded by buildings. If, then, we find that in 1844 Sing Sing and Auburn prisons are reported to have no walls¹ that should not be attributed to any premature application of the honor system but merely to neglect either on the part of the legislature in appropriating the necessary sums or on the part of the

¹ Prison Association, 1844.

management in constructing the wall. Nor is the lack of walls around county jails, still generally obtaining, an indication of progressive methods. It is rather the failure to appreciate its advantages for inmates as well as for staff. There is undoubtedly greater freedom of movement possible in institutions having a good wall than in those where lack of walls necessitates more intensive supervision and consequent repression. In the county jails, especially, the lack of walls means that there is no yard, and that, therefore, the inmates receive no outdoor exercise. It is difficult enough for sheriffs to be persuaded to permit the use of the jail yards for exercising court prisoners when good walls are available: they have an overwhelming fear of jail delivery. But without well protected jails it is futile even to suggest outdoor exercise. We find, therefore, that recommendations are made now-a-days both for the erection of walls and for their elimination, each in its proper place. Jails ought to have yards and these yards ought to be walled for the sake of facilitating the outdoor exercise of prisoners. Institutions of whatever character that are within cities, ought to be walled in order to increase the privacy of inmates, prevent smuggling, and decrease the limitations of movement within the institution. Penal institutions of any character ought to have at least part of the grounds walled for that group of inmates which is either incapable of self-control or which can for other reasons not be trusted at large. By supplying the facilities for restraint of this group the liberties permitted to others may be increased. The new Westchester County Penitentiary, and the plans for the new State prisons include such enclosure consisting partly of delimiting buildings and partly of walls. It is, however, unnecessary and impossible in fact to enclose an institution of larger acreage. Furthermore, it becomes less necessary to provide either physical obstacles or concentrated super-

vision, when the elementary requirements of classification have been satisfied and those temperamentally unbalanced and unreliable are separated from the more normal group, able to react to stimuli of self-respect and sense of responsibility.

EXTERIOR

The presence or absence of walls has in most cases not given institutions their characteristic appearance. That has been determined by considerations that cannot be traced quite to their origin. If, for example, the fortress-like forbidding architecture of prisons represented in such recent examples as those of the City Prison of New York and the Eastern Reformatory at Napanoch, are due to the mediaeval association of prisons with fortresses, then we should expect the architecture of Auburn and Sing Sing and of the Blackwell's Island Penitentiary, all built before 1830, to be of the same character. They are not so, however, though bad in other respects. The Albany County Penitentiary, on the other hand, built in 1846, does present much of the fortress exterior type. Going farther back still, we find that the first State Prison in New York at Greenwich (1796) was built along classical lines with apparently no endeavor to imitate fortified places. The earlier "Tombs," built in 1838, was planned on the model of an Egyptian royal burial place. It would seem more likely that the fortress idea was an architectural attempt to combine beauty with necessary security. The age of steel construction for prisons had not arrived until the latter part of the nineteenth century and the only means of security, therefore, rested in the thickness of walls. The architect's problem consisted in making thick walls attractive or picturesque: and the fortress was the solution. To a greater or less extent the fortress element is merely an attempt at decorating the un-

pleasant severity of thick massive walls and small windows. If we recall that the early cell buildings provided only small windows, approximately one by three feet in the outside wall of the cell houses, we can better appreciate the necessity of architecturally offsetting the forbidding aspect of such a great mass of stone regularly perforated at large intervals.

We are getting away from this type of architecture principally for two reasons. First, we now build two different kinds of prisons, namely, one for inmates requiring great precautions against escape, another for inmates requiring less precautions. We may dispense with a great deal of the mass in the latter one. Secondly, we have found a substitute in steel, that combines lightness with security and lends itself better to architectural treatment. Still more recently concrete has become available for the same purpose. Perhaps it would be unfair to say that more attention is paid to beauty now-a-days than earlier. Such pictures as are extant of the first State Prison would indicate as good judgment and taste on the part of its architect as in any prison construction now proposed. And for stately beauty of exterior, nothing that we have now exceeds the old Tombs. There is rather a tendency in the other direction. We are less prone to render our prisons impressive public buildings and to vindicate in that way the dignity, self-esteem and sense of power of the community. We are therefore also less generous in our appropriations for such purposes, and the architect must trim his decorative impulse to the available appropriations. Here again an excellent example is afforded by the new Westchester County Penitentiary. It is planned and executed with the greatest simplicity and yet in excellent taste. It affords all the security required and has, in the end, despite rising prices due to the great war, cost less than the original estimate by architect and contractors.

MATERIAL OF CONSTRUCTION

In the construction of prisons, wood, brick, stone, steel, concrete and tile have been used. In the exceptional case of Sing Sing, marble was utilized, because it could be quarried on the grounds. Wooden construction seems to have been general in the early jails, especially in the seventeenth and eighteenth centuries. A great many of these were destroyed by fire before, during and after the War of Independence. A few of them were still in existence in the "thirties." After wooden construction as a whole had been given up, wood was still used in ceilings and floors, stairways and galleries. In several of our most modern jails, fireproof to the last inch, access to cells is still by wooden stairways. No amount of criticism has succeeded in eliminating some of these wooden stairways. Wooden floors have been the rule rather than the exception in prisons for parts other than cell houses. Thus kitchens, chapels, store rooms, shops and offices have been built with much use of wood and have been to a large extent responsible for the frequency of fires in prisons. Only within the last three or four years have the wooden ceilings, floors and roofs been removed and fireproof material substituted in their stead, in the New York City Workhouse. In the House of Refuge a good many wooden floors are still to be found, and the same is true of county penitentiaries. All but the walls in most of the shops of the State prisons, and until recently of Elmira are of wood construction. A good deal of the interior work in the shops at Napanoch built since 1900 is of wood. We are told that in some of the jails back in the "thirties" walls have been lined with wood, though constructed of stone or brick.¹ To a very large extent all wood is being banished from prison construction at present, except for furniture.

¹ Boston Prison Discipline Society, 1840.

The use of brick has been general from the first, but is perhaps more prevalent now than formerly. In the construction of cell blocks especially, stone was used more generally at first, as for instance in Greenwich, Sing Sing, Auburn, *etc.* Brick has been considered insecure when constituting the only separation between the inmates and freedom, because a patient worker can easily remove the bricks and make his escape. In brick construction at present, or in tile construction, which is a still later substitute, and is often combined with the use of concrete, steel reinforcements are generally inserted in the walls at regular and frequent intervals. Steel construction is now very popular, especially in county jails and city prisons. It has the advantage of security with less bulk and if properly painted it is fairly permanent. Often bulges are discovered after a few years of use but these have thus far not proved to be sufficiently serious. The greatest objection to steel is its unhomelike character and, above all, the noisiness of its use.

Concrete is perhaps the most important building material recently used in prisons, especially where prison labor plays an important part. It has the great advantage of being cheap in the first place and of requiring practically no skilled labor. There is hardly a prison in the State now that has not undertaken some work with concrete either in construction work or in laying walks or replacing floors or other repairs. The greater part of the cell block at Great Meadow is built of concrete. All the foundations at the New Hampton Farm are to be concrete. Almost the entire institution at Guelph, Canada, has been built of this material.

The use of concrete is likely to affect the employment of prison labor in prison construction to a greater extent than any other single factor. It renders the employment of outside labor for skilled mechanics and the utilization of contractors practically unnecessary. Great success in its use

has been recorded in a number of institutions in this and other States. In many cases the manufacture of concrete or cement blocks has been substituted for the direct pouring of concrete into forms.

Perhaps, on the whole, the question of the material used in prisons is of no great importance when the necessary matters of sanitation are properly attended to, and when the cost of construction is largely reduced by the employment of prison labor. Historically it is important, however, that the limitations of space in the early prisons and the difficulties of introducing modern plumbing into surviving remnants of the older prisons are due to the former generous use of stone conceived of as the strongest and surest material for prison construction.

A long and interesting chapter might be written on the cost of prison construction.¹ In a great many cases there have been graft scandals involved. As recently as the building of the Great Meadow Prison and the projected Harlem Prison, accusations have become public regarding the unwarranted cost of some architects' or contracting service. It is a matter of record that the first cell block at Great Meadow cost almost three times as much as the second block. While much of this may be properly accounted for, there appears to be some justification for the public impression that the State's money had not been very carefully guarded.

The unsanitary and dilapidated condition of prison buildings has been often attributed to their architectural features, sometimes justifiably. But in most cases administrative slackness rather than original architectural shortcomings should be censured. A good administrator can make sanitation and physical conditions very nearly satis-

¹ The pressure of time owing to reasons enumerated in the introduction has rendered impossible the necessary research into this matter.

factory even with poor equipment. There are of course such impossible limitations as the Sing Sing cell block, the New York Penitentiary cell block, the dormitories on Hart's Island, and some of the county jails, and it is fair to say that much blame attaches to the construction itself. Such faults, for example, as are recited in 1879 relating to county jails¹ can hardly be remedied by mere administrative good will. In that year it is reported that of all county jails in the State only five could be called good, some of these even admitting of improvement, while thirty-one were very bad. Twenty-nine of them were insecure, twenty-one poorly devised, and nine "can be called underground dungeons utterly unfit for human beings. Of the rest, thirty or above half the entire number of jails in the State are very defective as to light, air and drainage. There are nine which have no effective drainage; of Schuyler County jail it is reported that the stench from the privy vault cannot fail to produce disease. In that of Wyoming County it is said to be so bad that every sheriff for several years has suffered in health, and in that of Livingston County it is reported that some of the cells are so poorly ventilated that the health and life of prisoners are jeopardized."

The speed and universality with which county jails have been remodeled or replaced by new buildings in the last three or four decades is more proof of the truth of the fundamental importance of architectural features in the sanitation of jails than any theoretical discussion could produce.

SECURITY AGAINST ESCAPES

Escapes have taken place not only from insecure county jails but from "perfectly secure" State prisons and are

¹ Prison Association, 1879, p. xxii.

taking place even at present from institutions where the most active imagination of the man outside of prison could find no way of escape. But from the prisoner whose only thought is freedom, and who often has special cunning from his "profession," no type of construction is safe without adequate and constant supervision. For our purposes the main importance of the question of security is the extent to which ordinary comforts and reasonable privileges of the prisoner have been curtailed for its sake. The exceedingly heavy stone construction of cell blocks, the diminutive windows in the outside walls of the cell houses, the depressing supervision in mess hall and chapel, the shackling of prisoners, hand and foot, in process of transfer, the reluctance to allow them outdoor exercise in county jails, the restraint upon visits from family and friends, these and other methods seem to have been devised for the purpose of increasing security fully as much as for the sake of emphasizing the retributive aspect of imprisonment. Indeed it has been deemed necessary, especially in the jails and detention houses, to restrict the ordinary privileges of the prisoner to a greater extent for those still awaiting disposition by court and therefore technically innocent, than for those already convicted or serving sentence. It is granted that prisons are expected to keep those committed to them, and that a part of the duties of the prison executive and architect is to render their detention easy and certain. But a wide debatable margin remains between what is considered necessary for this purpose by different individuals.

RESPONSIBILITY FOR PRISON PLANS

The variation in the architecture of prisons built in successive years of the last century and in many cases within the same decade or year, emphasizes the importance of the fact referred to elsewhere that the construction of institu-

tions has depended upon commissions or local groups with no responsibility to any central authority. Until the creation of the prison commission by the constitution of 1894, and legislative act of 1895, there was no authority in the state with control over prison plans. The boards of supervisors in the case of county penitentiaries and jails, the several commissions appointed in the case of the state prisons and reformatories had no other authorities to report to than those appointing them. In practically all these cases the appointees represented either the same political faith as the administration of the state or local sub-division, or were representative members of the community so that their plans on the whole were not severely criticised. Their decisions, for the same reason, generally represented the public attitude and accepted popular theory of prison construction. In the story of the architectural changes in prison construction we may therefore find an approximate if not very clear trace of the development of the popular attitude towards prisons. From diminutive cells to rooms, from somber depressing stone cell blocks to cheerful outside cells, from careless jumbles of buildings to a thoughtfully planned arrangement, from the bucket system to modern plumbing and water supply, from one-half acre to over one thousand acres, from stone monuments to efficient working buildings. These are the main lines of change in the architecture of prisons, and represent perhaps in a fair way the development of the public attitude towards the prison question.

SIZE OF INSTITUTIONS

From the standpoint of treatment the size of an institution has importance only in connection with prisons for convicted persons. Jails and lock-ups are intended in the first place as merely places of temporary confinement. Their capacity

has been determined largely by the amount of "criminal business" of the immediate community for which they serve. Thus lock-ups vary in capacity from one to several dozen. County jails may vary from hardly more than a half dozen cells, to several hundred. It may be generally said that county jails have had an insufficient number of cells for the amount of business they transact. The number of cells in any institution should be determined not by the average population but by the maximum. Thus jails having an average of perhaps a dozen through the year often have from thirty-five to fifty during the winter months. Actual physical conditions in the jail bear little relation to the mathematical average. What every community ought to prepare for is the largest number reasonably to be expected. The experience with county jails in this State has been that almost universally their facilities were far below their requirements on this basis; and most of the complaints and criticism directed against these institutions have been caused by conditions arising from congestion in the busy periods. Generally speaking, the fall and winter months are heavy, while the summer months are light. The increasing population during the fall and winter is due to a greater number of commitments for vagrancy and other small offenses committed in part with the definite purpose on the part of the prisoners to obtain shelter when park benches and road sides are too cold. In these institutions therefore the undesirable features are twofold: unsanitary and often indecent congestion for all, including court prisoners, and a greater amount of idleness among the prisoners serving sentence. However, in this respect it would make no difference in most county jails whether they were few or many, for the same idleness would obtain in any case.

The question of size and capacity is of primary importance in institutions where true treatment is attempted.

and it becomes important for the executive to be personally acquainted with the inmates. The desirability of this, and even more the administrative difficulties of dealing with a large population, have brought repeated recommendations by executives for small-sized institutions. Most institutions have grown far beyond the original size intended by their builders. Accretions are determined by the gradual increase of population and by explosive demands for more room when conditions grow unbearable. The only institution of importance in the history of prisons in this State that has failed to increase its original capacity to any appreciable extent was probably the first State Prison of New York, and that, largely, because by the time it had so outgrown its original size that desperate means had to be resorted to, the legislature determined to build a new prison rather than extend the original one. By 1816, eighteen years after the construction of the Greenwich Prison, Auburn was begun and less than ten years later Sing Sing was under way. The Greenwich or New York Prison had been constructed full size, as it were, in accordance with the plans, immediately upon the passage of the law creating it. The capacity of the institution—four to six hundred—remained the same from first to last, only the degree of congestion changed. Auburn was begun with sixty cells and twenty-eight rooms in the south wing; the north wing completed five years later added several hundred cells, and further additions were made from time to time. Sing Sing was started with eight hundred cells and was increased at the rate of two hundred cells until it reached the present maximum of twelve hundred. In the Blackwell's Island Penitentiary at first only one cell block was erected. It was followed within a few years by another block of about the same size, giving a total of approximately five hundred cells by about 1835. Twenty years later another cell block was

added. No more additions were made until the "nineties" when the last double cell block was erected, giving a total of almost twelve hundred cells. The story is similar in respect to other institutions. The first location of the House of Refuge was entirely temporary and may not perhaps be considered as of the size intended. The capacity provided was materially increased in its second location and reached, in 1854, practically the present capacity of between eight and ten hundred. Generally the size of the institution when created by law was determined in the enacting law. The size so indicated was generally interpreted, however, to refer mainly to the utilization of the appropriation granted, and there seems to have been no attempt made in any case to amend the law when extensions were planned. Perhaps the very act of appropriating additional sums for such new buildings as were necessary may have been considered as of an amendatory nature to the original law. In some cases, especially in the State Reformatories for Women, the legislature made an especial attempt to limit the final capacity of the institution but even then no attempt was made to block extension except by failure to make the necessary appropriations for new buildings.

The prestige of the first State Prison, and with it of all imprisonment as a substitute for the sanguinary punishment preceding it, was very seriously endangered by the evils at the State Prison caused almost exclusively by congestion of the institution and of its activities due to a census far in excess of its capacity. The inherent evils of such an institution as the New York Penitentiary in the middle of the last century were accentuated by overcrowding; and the conditions from time to time, at Hudson, Bedford and Albion tell the same story. In both Albion and Bedford there was congestion almost immediately after their occupancy, although not so serious as later, especially after 1905.

It was not failure to recognize the undesirability of large institutions nor of overcrowding that has been responsible for these conditions. Numerous opinions of penologists are recorded from at least the early "sixties" condemning institutions of large size. The various experts consulted by the special commission of the Prison Association in 1866 agreed on a desirable maximum of between three and four hundred and an absolute maximum of five hundred. When Clinton Prison was established in 1844, one of the matters uppermost in the minds of those interested in the new institution was that for the first time perhaps they would be able to limit its population to about two hundred inmates. The State Board of Charities was active from time to time in advocating a maximum capacity of not over two hundred and fifty for the State Reformatories for Women. In 1915, as the result of conditions that could no longer be tolerated the Board modified its stand somewhat by agreeing to a maximum of two hundred and fifty for Albion and five hundred for Bedford. However, no opinions, however well founded, had any chance of consideration when congestion became unbearable and no possibility for new institutions in sight. And so prisons have continued to increase in size, decreasing possibilities of individualization, and increasing congestion. At present each State Prison and the New York Penitentiary contain approximately twelve hundred cells, theoretically for twelve hundred prisoners, but often used for as many as eighteen hundred, either by "doubling up" or by the use of supplementary dormitories. The county penitentiaries (excluding New York) vary from four to six hundred in cell capacity; the women's reformatories from two hundred and fifty to five hundred; children's institutions from seven hundred to one thousand.

There are very few instances on record where any institu-

tions have desired to increase their population. These happened only where institutions originally built for a large population and requiring a considerable number of prisoners for proper administration had, for some reason or other, suffered a serious decrease in the census. Instances are, notably, the House of Refuge, and the Elmira Reformatory in recent years, and the Albany Penitentiary during the early "sixties." In the latter case the Civil War had decreased the population below a feasible minimum and Warden Pilsbury succeeded in obtaining Federal prisoners. For the same purpose the House of Refuge and Elmira Reformatory have attempted, the former successfully, to reduce the qualifications for admission.

HOUSING EMPLOYEES

The matter of housing employees has always been an important consideration in the construction of prisons, especially in institutions located outside of city limits. There is no uniform principle as to whether employees should be housed in the institution or outside. It depends entirely upon the character of the prison, and to some extent on the generosity of the community. The first State Prison at the time some distance from New York City proper, provided living quarters for some of the employees. The later State Prisons uniformly provided a residence for the warden and quarters for a reserve force of guards which is generally kept at the prison in addition to the night staff. In some cases the principal keeper also is supplied with residence. In the county penitentiaries also, residence is generally supplied for the warden. Occasionally a few additional officials are also provided with a room or two. But generally speaking only the warden is entitled to residence at institutions for convicted prisoners. At the Elmira Reformatory the senior physician and the chief clerk in

addition to the superintendent are supplied with separate houses. At the Great Meadow Prison because of its distance from any community where the prison officials might obtain reasonable quarters for themselves and families, the State has undertaken to build some cottages which are rented to officers at a nominal rate. In the Elmira Reformatory quarters have been provided for the unmarried men. In the children's institutions on the cottage plan, most of the officials represent family supervision of the children and therefore necessarily are given quarters in the cottages. At Industry, for example, every cottage is supervised by a man and wife who are permitted to keep one child with them and are given fairly satisfactory rooms in the cottages. On the whole it has been found desirable by prison executives to have quarters at least for a part of the prison staff, especially its unmarried members. This, primarily, because of the additional hold that institutions thus obtain upon such officers; secondly, because of the difficulty of obtaining satisfactory quarters in the case of institutions outside of cities; and thirdly, because it is thus possible to exercise stricter supervision over the general behavior of the officers which has not always been unexceptionable. In some cases, as for instance on Hart's Island in the City of New York, it has been imperative to supply living quarters practically for all, because of the relative inaccessibility of the Island. Generally, officers provided with living quarters at institutions have been given their meals as well. This, however, has not been universal. In some instances, as for example at Elmira and Great Meadow, the institution conducts a restaurant for its employees at cost price. It is necessary to supply to such officers as are quartered in the prisons some privileges for social diversion. But it has generally been difficult to persuade the appropriating authorities that such facilities were not luxury. The very much more

generous treatment received in this respect from the Elmira Reformatory which has supplied billiard tables and a living room for its keepers shows the peculiar broadening effect which the whole theory underlying that Reformatory has had upon the general public and the legislature. Things that in the State Prison would have been considered a luxury seem to be granted at Elmira without question; and it is hardly likely that this treatment may be attributable to political connections. The salaries of employees have often been determined partly by consideration of the maintenance granted them; thus the supervisors and matrons in the cottages at Industry receive \$60 and \$30 per month respectively in addition to maintenance. It would seem that much more serious consideration is given to the advantages of providing quarters for prison officers now, than heretofore, and that "maintenance" is going to be more liberally applied so as to include not only bed room and meals, but also recreational facilities. It is therefore now considered an integral part of institution planning by architects to provide the necessary space for such purposes.

CHAPTER VI

CARE AND CUSTODY, CONTINUED

LIVING CONDITIONS

IT is in the standards set up for the general living conditions of prisoners that the definition of prison as a place of punishment may be found. It may be granted that the living conditions, food, clothing, freedom of movement, and spontaneous activity of the prisoner must be kept within prescribed bounds, sufficiently limited so as to keep constantly in his consciousness the fact of his exile from the community and of his moral debt to his outraged fellows. At any rate much of this attitude is bound to remain for a long time. There is incontrovertible logic in the idea that in those aspects of daily existence that do not directly affect the essentials of life there shall be a differentiation in favor of the man who observes his obligation to the community. Such a conservative differentiation seems reasonable. But the history of prisons does not show as mild a conception as that. The State has permitted itself to exercise positive suppressions even within the essentials of life to an extent that frequently has assumed dimensions of cruelty. The law of 1828 provides¹ that prisoners shall be provided with bedding, clothing and food, of coarse quality but sufficient in quantity, and manufactured, if possible, in their respective prisons. The coarseness of food, clothing and bed-

¹ Revised Statutes 1828, title 2, art. 2, sec. 57, taken from the first revision of 1813, chap. 275, sec. 14.

ding provided has never been questioned, and on the whole the quantity has been satisfactory. But prisons have gone far beyond the literal interpretation in all aspects of living conditions provided.

The important items to be considered in this chapter may be presented under the following headings:

1. Cells or dormitories, size, and equipment.
2. Clothing, bedding and accessories.
3. Food.
4. Medical care.
5. Sanitation and cleanliness.
6. Exercise, recreation, *etc.*

I. CELLS AND DORMITORIES

In speaking of cells we must distinguish three different kinds. First, those used in the Auburn plan of separate confinement; second, those used under the Pennsylvania plan of separate confinement, and third, those used for punishment or solitary confinement. We can dispose of the Pennsylvania plan cells very briefly. Inasmuch as the Pennsylvania system has never been adopted in this State there has been no need for cells of that type with or without their attached yards. Recently there have been three buildings constructed on the Pennsylvania type, but these are for punishment purposes within institutions, and will be discussed elsewhere. They exist now in the Auburn and Clinton prisons and on Rikers Island in the City of New York. The ordinary punishment cells also will be dealt with in another chapter. We need therefore concern ourselves only with the Auburn type cell, that is, cells used for the separate confinement at night of persons employed in common during the day and with the cells in county jails or detention prisons which are used day and night. It is to

be regretted that practically all cell construction up to the beginning of the twentieth century has followed the type set by the Auburn prison in respect to size and equipment. Some, in fact, notably Sing Sing, have outdone their model, and provided even less satisfactory cells. It has been only towards the end of the nineteenth century and largely as a result of the new conception brought in by the use of rooms in women's institutions that the standard set by Auburn was discarded. The original cells of the Auburn prison are still standing and in use. They are approximately four feet wide by six feet long by eight feet high with vaulted ceilings giving approximately 192 cubic feet of air space as compared with the 400 cubic feet now regarded by health authorities as the minimum per person. The first cells of this kind were constructed in 1819. About 1825 the Sing Sing prison was begun and, as indicated, the cells were made considerably smaller than in the Auburn prototype. There is some slight variation in the Sing Sing cells. They average three feet three inches wide, seven feet long, six feet seven inches high, with a small space at the door some six feet by two feet by about eighteen inches (determined by the thickness of the wall) giving a total air space of about 169 cubic feet. The Clinton prison, the penitentiary on Blackwells Island and the other county penitentiaries have followed closely the Auburn pattern. So, also, the older jails built soon after the construction of the Auburn prison. Jails constructed later were generally on a more generous plan; perhaps, to some extent, because it was assumed that from time to time more than one prisoner would have to be detained in each cell. Those institutions constructed within the last quarter of a century broke entirely with the older Auburn tradition, in both the size and shape of the cells and, perhaps most important, in the construction of the cell front. The Elmira Reformatory built in 1876 in-

creased the traditional cell to seven by five by nine feet, giving 315 cubic feet of air space or almost twice that of Sing Sing. Later cells were still larger and the Napanoch cell was a still further improvement. The latest State prison, at Great Meadow, provided cells with average dimensions of five by nine by eight feet three inches giving very nearly 400 cubic feet. These are probably the largest cells in any institutions built thus far with the exception of some county jails. The Erie County Jail in Buffalo completed about a year ago, has cells varying from six by ten to seven by ten, and nine to ten feet high. The cells at the new Westchester County penitentiary are somewhat smaller than the Erie County jail cells. The limit of size of the average cell seems therefore to have been reached at approximately six by nine by nine feet, giving about 480 cubic feet. One reason perhaps for the increase of the size of cells has been the new standard set in women's institutions constructed on the cottage plan. In these, rooms were substituted for cells, in both appearance and size. These rooms in Bedford, Albion and Hudson are nearly the size of an ordinary bed room about ten to twelve feet long by six to seven feet wide and ten feet high. They contain considerably more than the standard minimum of cubic air space. There seems to have been no great difference between the size of cells provided for children and those for adults. The cells erected in the House of Refuge in 1826 were three and one half by seven by six feet, providing a capacity of 147 cubic feet of air space: less than the Sing Sing cell but superior because of its location against the outside wall, its better ventilation, and freedom from dampness. The cells still in existence in one wing of the House of Refuge, used for the older boys are more generous in dimension and very much better in other respects, especially in having open cellfronts.

We have referred several times to the front of the cells.

They are fully as important as the size. The cells of the old type have been fronted by solid walls except for the entrance generally six feet by two feet cut through a wall varying from one to two feet in thickness. This space is too small for the admission of a proper amount of light or for satisfactory ventilation. It was, however, further reduced by the cell door, the traditional form of which provided a solid steel plate for some three-fifths of its height from the bottom and a lattice-work for the remaining two-fifths, of which only about one-fourth was actually open. Not more than one or one and one-half square feet of communication between the outside air and the cell has therefore been permitted by these cell doors. We must conceive of the old Auburn, Sing Sing or Penitentiary cell as a diminutive box of the size indicated, with an opening of some fifteen inches square for inlet of light and air from the outside corridor. These solid cell doors have continued to be used practically up to the present. In some prisons they have of late been modified by the removal of the steel plate from the lower part of the door and by the removal of a few strips of steel from the lattice work. Toward the middle of the last century the use of open bar work for doors was introduced and the old solid doors gradually abandoned. They were retained however, where already in use.

A further factor determining the quality of the cell has been its location whether against the outside wall¹ or as part of an inside cell-block. Under the latter plan light and ventilation of the cell is obtained through the corridor

¹ An outside cell is one constructed on the same plan as rooms in dwellings, with windows opening to the exterior; inside cells are constructed in a solid body, like cells of a beehive, in rows upon rows, sometimes six high, and back to back to another series of rows of the same kind, the whole placed, as it were, in a hollow building, with a space of some 8-20 feet between the walls of the building and the cell-block.

surrounding the cell block from windows in the outer wall of the surrounding cell house. We can hardly conceive how little light can thus be supplied through the almost windowless outside walls. At Sing Sing, Auburn and the Blackwells Island Penitentiary, the oldest examples of this style of construction, the small one-by-three windows in the thick outside walls have been eliminated and great windows running the full height of the wall substituted in their stead. There is no comparison between the light admitted in the cell since this improvement and previously. The newer prisons constructed on the cell-block plan, such as Elmira, Napanoch, Great Meadow, and the added cell-blocks of the older prisons have been constructed on the new plan with big windows in the outside walls. But for almost three generations the Sing Sing prison cells received only the amount of light and air admitted by the diminutive windows.

The present trend, largely a result of agitation by the Prison Association which has given considerable time to the study of continental prison architecture, is towards the substitution of outside cells for the cell-block type of construction. Earlier in the history of this state there have been institutions built on the outside cell plan. The first cells of the House of Refuge in 1826 were of the outside type with a window for each cell. The dormitories in the original State prison were also of the outside type but may hardly be designated as cells. The Tombs Prison, built in 1838, had cells with small windows to the outside at a considerable height from the floor. The Workhouse built in 1854 was also built with outside windows. But these are exceptions and did not directly affect the general prison architecture (which was so largely under Auburn influence) until recent years. The new Westchester County Penitentiary was constructed entirely on the outside cell plan. The same type has been adopted for the remodeled Erie County jail and the new

Bronx County Jail, and is the principal feature in the plans for the new Sing Sing and partly at least for the new Wingdale State Prison.

The disadvantages of the cell type of construction as against dormitories thus far have been mainly in size, inadequate equipment, poor light and ventilation, and, in some cases, dampness. It does provide, on the other hand, a fair amount of privacy, and security of the inmates' personal property, at least under fairly efficient administration. For the dormitory plan its advocates have pressed the advantage of cheapness of construction, satisfactory ventilation and more normal social contact. It has the distinct disadvantages of rendering privacy impossible, property of prisoners insecure, and physical and moral contamination easy. Moreover, the great argument in favor of better ventilation has been largely negatived by the fact that almost without exception dormitories have been overcrowded far beyond their initial capacity. The history of the first State prison is the first instance of this kind. Many others might be cited, among them the dormitories or hospital departments of the Blackwells Island Penitentiary in the forties, and the latest and most persistent example, the dormitories at Hart's Island. So far as we know, no prison in the State outside of children's institutions has supplied lockers to inmates of dormitories. Penologists today are, with few exceptions, uncompromisingly opposed to the use of dormitories. The necessity of keeping a large staff for the supervision and safekeeping of inmates in dormitories has counted perhaps as much in the opposition of prison executives to the dormitory plan as any other feature.

The importance of the proper kind of sleeping provisions in penal institutions is increased by the fact that the number of hours spent in sleeping apartments in prisons is much

greater than in normal outside life. During the greater part of the prison history, inmates have left their cells between six and seven in the morning and returned at four o'clock in the afternoon. From four in the afternoon until six or seven the next morning, or an average of fourteen hours every day, including the evening meal time, they spent in their cells. Saturday afternoons and all day Sunday until Monday morning, or the greater part of forty-eight hours were also usually spent in cell or dormitories, with a break only for religious services and the Sunday dinner. It is clear therefore, that the sleeping accommodations in prisons are of more than ordinary importance.

EQUIPMENT OF SLEEPING QUARTERS

In our homes we generally distribute the various necessities for our daily comfort through the different rooms of our apartments—morning ablutions, baths, toilet, lounging, eating, retiring, are provided for in different parts of our homes. The prisoner has nothing but his cell and the shop. The cell is bedroom, living room and toilet, and in some cases also bathroom and dining room. The cell equipment includes in most cases, besides bed and bedding, also something that may be used as a table, a chair, some eating and drinking utensils and toilet equipment. Our old cell prisons, including the Auburn, Clinton, Sing Sing prisons, the Blackwells Island Penitentiary, most of the county penitentiaries and a great many of the jails up to recent years have provided these essentials but very meagerly. The bucket system has obtained and does still obtain in all the State prisons except Great Meadow, in most of the county penitentiaries, in part of the Elmira reformatory, and in a few jails. Meals are still taken in cells in almost all county jails and city prisons. Faucets with running water and basins are found in the prisons constructed in the last

quarter of a century or so, but in none of the older State prisons or penitentiaries. They were not supplied in the House of Refuge. Sheets and pillow cases have never been provided in the State prisons and are provided now only in a few cases in county jails and not in all the New York City institutions.

A part of the cell equipment is removable. Different practices have developed in respect to this removable equipment, including bedding, drinking cups, spoons, chairs, etc. In the best conducted institutions there is a definite system established for the removal and checking up of such equipment upon the discharge of the inmate and for the furnishing of the same to newly admitted prisoners. The completeness of the systematization of this practice often is a good index of the general quality of the prison administration. In recommending improvements in prison systems this phase is often dwelt upon. The greatest perfection in the system has been attained probably at the Elmira Reformatory where inmates upon their admission are supplied with a minutely detailed list of articles including coat, vest, trousers, shirt, two suits of underclothes, cap, shoes, stockings, wash basin, water cup, broom, dust pan, comb, hair brush, tooth brush, blacking brush, box of blacking, towel, soap, four sheets, two pillow cases, and one blanket. Compare with this some institutions where not even a clean piece of bedding is supplied to the inmate on admission.

The shortcomings of cells and dormitories may be summed up under the following categories: size, ventilation, overcrowding (taking the form of doubling up in cells), inadequacy of equipment, vermin, lack of water supply, poor light, unsatisfactory bars, (either too many or poorly planned) lack of privacy, and material of construction. We have referred to size, ventilation and light and briefly to equipment. The matter of overcrowding has been referred

to elsewhere and the evils of doubling up can hardly be adequately described and must be represented to the reader by a generous draft upon his imagination. Water supply in the individual cells has been introduced in only four institutions and one only—the Westchester County Jail at White Plains—has had both hot and cold water in the cells. There remain only two matters in connection with the cell or dormitory proper, namely, the matter of vermin and that of materials of construction. The first may be briefly disposed of. During the whole history of prisons there has never been complete success in eliminating vermin. There seems to be no discernible and steady improvement. The worst descriptions in this respect, found in reports of the early part of the nineteenth century may be equaled and possibly surpassed within recent experience of the writer. Improved construction, with the elimination of cracks and joints has reduced the available lodging-places for vermin and thus, despite official neglect, the vermin pest has been slightly alleviated. The general clean appearance of prisons does not necessarily denote freedom from vermin. Numberless instances might be quoted within the writer's experience where apparently spotless prison cells and corridors, on closer inspection revealed conditions that do not invite presentation in print. This unpleasant evil would practically not exist were prison executives earnestly concerned with its elimination. But the evil generally has not extended to the wardens' residences or the officers' quarters and the concern of the authorities has therefore not been intense.

MATERIAL OF CELL CONSTRUCTION

Cells have generally been constructed of much the same material as the exterior of the prison, especially in the earlier institutions. Thus in Sing Sing, for example, the cell house

as a whole and the cell block were both built of stone quarried on the institution grounds. The House of Refuge and Auburn Prison were built of brick. Brick and stone represent practically the entire gamut of materials for cell construction up to perhaps the last third of the nineteenth century. Wood construction had been given up early in the century. During this recent period concrete and steel have come into their own; in many prisons steel is used in cell construction where the cell house as a whole is built of other materials. In many instances backs of the cells, and ceilings and floors are built of concrete or stone, and partitions of steel. In some county jails almost the entire brick or stone structure is lined with steel, including the floors of the cells and corridors. The most recent type of construction probably represents an equal amount of steel and concrete. Steel is used to reenforce the concrete of the side walls, back, ceiling and floor, and steel bars with perhaps a small amount of steel plates are used for the front of the cells. A good example of this type of construction may be found at Great Meadow. So far as the writer knows there is only one instance, namely the new Westchester County Penitentiary, where hollow tile filled with concrete and reinforced with steel was used in the construction of cells.

For the first fifty to seventy-five years of prison construction reports indicate the general use of whitewash for cell interiors. Frequent application of whitewash was considered a desirable sanitary precaution. In Napanoch until a year or two ago whitewash was still used for cell interiors. Similarly in the Albany County penitentiary. The opinion of specialists in tuberculosis has tended to discontinue or at least diminish this practice. Oil paint and enamel are now generally used. The cells at Auburn are enamelled and in most of the other prisons are painted with oil paint. The color is generally ochre or some darker tint of yellow, oc-

asionally gray with a preference for dark borders at the bottom. For the bar and steel work, especially in the newer county jails, aluminum paint has been extensively used.

2. CLOTHING

There are certain elementary necessities in the way of clothing that constitute an acknowledged minimum standard. This fact probably accounts for the comparatively little change in the standard of clothing from the early prisons to this date. The most important change has taken place not in the amount or quality of material supplied but in its appearance. The provision of clothing has been regarded as an undebatable duty in all penal institutions except county jails or detention prisons. Those accused of crime but not yet convicted, being in the law innocent and therefore not subject to any but unavoidable restrictions, have been free from the requirement of wearing prison uniform. Moreover, their period of sojourn in the institution being generally brief and in most cases very indefinite, the supply of clothing has been deemed impracticable. County jail prisoners, however, even where serving sentence, have failed to receive institutional clothing; partly because of the precedent established for court prisoners who have always constituted the more important part of the county jail population, and partly because of the generally low standard of all aspects of county jail administration. In the early debtors' prisons in the seventeenth and eighteenth centuries not only was there no clothing supplied, but not even food was given the prisoners and they had to shift for themselves as best they could. Today there are probably half a dozen county jails among the sixty-two in the State that supply a uniform suit to their inmates including court prisoners and those serving sentence. It is done in these cases as a matter of sanitary precaution and for the purpose of raising the standard of cleanliness in the institution.

There are some early statutes which empowered the prisons to collect from inmates the cost of their maintenance in clothing and food. But thus far no institution has availed itself of this opportunity. Perhaps it would be a fruitless attempt, most of the inmates being too poor. Moreover, it would contradict the principles of the State's relation to the prisoner as teacher and reclaimer.

There may have been some growth in generosity in respect to the supply of clothing. The Elmira Reformatory especially has been supplying not only the necessary clothing for ordinary daily wear but a generous amount of special supplies for unusually hard work, and a complete outfit for military dress parade. The custom of having dress parade twice a week has helped to raise the general standards of personal neatness and cleanliness.

The standards of clothing now generally accepted call, in the case of a man, for a complete suit of winter clothing, a complete suit of summer clothing, extra trousers, both winter and summer, outside shirts, summer and winter underwear, socks, shoes, nightshirts and winter gloves. In the case of women the clothing is less expensive, easier to make and therefore more generously supplied. The desirability of a Sunday suit is being only gradually and slowly admitted although recommended as early as the twenties of the last century.

The supply of clothing has on the whole been estimated by institutions in a very haphazard manner. The introduction of a per capita allowance on the basis of the average annual population has been worked out only in recent years. After some experimentation in the Department of Correction of the City of New York, there has been adopted within the last two years the following per capita allowance, which is used as a basis for budgetary requests: men's clothing, one complete suit of winter clothing, one extra pair of winter

pants, two pairs of summer pants, three outside shirts, three suits of winter under-clothing, three suits of summer underclothing, fifteen pairs of socks, two and one half pairs of shoes, two night shirts. Women's clothing: Three dresses seersucker pattern, three pairs of drawers, three chemises, two petticoats, twelve pairs of stockings, two pairs of shoes, two nightgowns. The per-capita would naturally vary in different types of institutions. Where inmates are sentenced for longer periods the individual interest and care given to the clothing is likely to prolong its life. Where the population changes frequently and clothing, especially of the heavy kind, has to be frequently laundered, a greater amount per capita is required.

The custom of marking the inmates' clothing with his number or name so as to insure to every inmate the return of his own clothing from the laundry is comparatively recent and was probably inaugurated in the reformatories. It has not yet been generally introduced, principally because of the negligence and lack of interest on the part of prison executives. Such a system requires an efficient laundry administration and a general recognition on the part of the executive, of the value of producing or maintaining the inmates' self-respect.

Prisons and reformatories where felons are confined supply an outfit of clothing to such prisoners upon discharge. The legal provision for this purpose (section 324 of the prison law) covers penitentiaries and state prisons only. But reformatories have been following the same practice without specific legal provisions. The amount of clothing is generally specified in monetary terms, that is, "not exceeding twelve dollars in value except for the time between the first day of November and the first day of April when clothing not exceeding eighteen dollars in value may be given." Many prisoners have refused to accept this clothing upon

their discharge because of their fear of recognition as ex-prisoners. It has been possible generally to supply such objectors with clothing voluntarily donated by outsiders or left behind by prisoners who obtained new clothing from their homes or from their own resources. In the county jails the supply of clothing to discharged prisoners has depended largely upon the good-nature and initiative of the sheriff or jailer. In many jails there is always a supply of old clothing on hand for such cases collected from private individuals. A few counties actually supply clothing when necessary from county funds both in the jail and upon discharge.

Complaints are not so frequent in regard to clothing as in regard to some of the other aspects of prison conditions. Wines and Dwight reported in 1867 that the clothing furnished to convicts, though coarse, was generally substantial and comfortable; that the material used was composed wholly or chiefly of wool but that the same suit was generally worn both summer and winter, the only difference between seasons being in the weight of the underclothing. In many cases inmates simply omitted their underclothing in the summer. They reported further the absence of any system by which inmates might receive their own underclothing back from the laundry. Massachusetts was mentioned as the honorable exception in this respect. They found that no reasonable extra supply was given to convicts employed at labor which soiled their clothing and that this group often presented a very unpleasant appearance. More than twenty years before their report the Prison Association referred to the clothing as insufficient and not clean enough. They deplored the lack of Sunday suits.¹

¹ *P. A.* 1846, part ii, p. 8, and 1845, p. 96.

STRIPES

The most objectionable feature about the clothing of inmates has been, however, not insufficiency, but unsightliness. The material was generally striped or parti-colored and has always been regarded as implicit in the punishment by imprisonment. The use of this kind of clothing dates back at least as far as the beginning of the nineteenth century. The Board of Inspectors of the State Prison report in 1822 that prisoners when received in the prison were "stripped and attired in a coarse striped dress (manufactured in the prison). If a second comer, the right side of his jacket and left side of his trousers are black. If a third comer he has in addition a large figure 3 on his back."¹ Apparently there was little change from this in the middle of the century for the Prison Association still complains in 1845 of parti-colored clothing at the State Prisons. In fact the final abolition of the stripes in the State Prisons did not take place until about 1907 during the administration of Superintendent Cornelius V. Collins. In the county penitentiaries and in New York City Workhouses stripes continued until 1914-15 when the custom was gradually abolished under the commissionership of Dr. Katherine B. Davis. The resentment against stripes and particolored clothing is old, and appears to have been felt in the early history of the first State Prison, although little attention was paid to it by the authorities. Later in the century there was more or less continuous criticism of stripes. In 1864 we read²

that convicts when they first entered a state prison often rebelled most vigorously against the prison uniform. It is odious to their feelings; it wounds their amour propre; it is a rude shock to their self-respect. It degrades them in their own eyes;

¹ *Report Bd. of Prison Insp'rs 1823.*

² *P. A. 1864*, p. 20.

it robs them in their own esteem of more than half their manhood. Now nothing which produces effects like these should be forced upon a prisoner except on an imperious and overmastering necessity.

The abolition of the stripes by Massachusetts in the same year was pointed out; but no success is reported until the twentieth century. The testimony given before the special commission of the Prison Association in 1866 shows a general agreement on the part of progressive prison men that the stripes are undesirable. Apparently their use was not introduced either in the House of Refuge or the Elmira Reformatory. In both these institutions the military system sooner or later adopted as part of the administrative routine led definitely in the opposite direction, namely, toward the supply of clothing in itself inspiring and tending to raise the inmates' self-esteem. It is now customary in some of the county penitentiaries where the stripes have been abolished for the general population, to retain them for those inmates who have attempted to escape and have been recaptured. This is intended partly as punishment and partly as an aid to keepers in their supervision of those who have a tendency to run away.

There has been until recently, very little use, by inmates, of their own clothing. In State Prisons and penitentiaries they have generally been forbidden to wear anything but the regulation clothing supplied by the institution. Of late these restrictions have been somewhat relaxed, and the practice is spreading of permitting prisoners to buy or to have sent to them sweaters of a neutral color, and shoes. In some cases also underwear is permitted. This has perhaps grown out of the general practice of permitting prisoners to supplement the cell equipment provided by the State. In the State prisons especially tradition has sanc-

tioned the acquisition by inmates, of easy-chairs, rugs or mats and sheets and pillow cases.

Combs, brushes, tooth brushes, and soap have been very unevenly supplied by institutions. The standards have been better in children's institutions and reformatories, than in prisons, penitentiaries and county jails. Records on this point are insufficient to judge in full. But even at this date it is only in a minority of institutions that tooth brushes are supplied; probably none, but the Elmira Reformatory, supplies brushes or shoe blacking. The soap used is mostly of a poor brand and insufficient in amount.

BRUSHES, SHEETS, TOWELS, *etc.*

The supply of sheets and pillow cases is still not a general practice. Recommended early in prison history, strongly urged by Wines and Dwight, and by various reports of the Prison Association, it still requires much pressure to extend their use. During the last five years most of the institutions in the Department of Correction have been for the first time supplied with sheets and pillow cases. At present all but one of the institutions in that department are so supplied. State Prisons still fail to give these accessories and only such inmates are found to have them as can obtain them privately. The supply of towels has also been in most cases unsatisfactory. Generally an inmate is given a towel on admission and is expected to keep the same towel as long as he stays or until it wears to shreds. He generally launders it himself either in his cell or in his shop. One frequently finds both cells and shops hung with towels and underwear laundered by the inmates. Even in the reformatories, an insufficiency of towels sometimes exists. Pamphlets issued in criticism of the House of Refuge in 1886 point out among other things the shortage in towels and the use of unsanitary roller towels on that account by a great many inmates..

3. FOOD

We have referred to the law of 1828 which directs that, among other things, food served to prisoners shall be coarse but sufficient. That provision is still on the statute books. The passage of that law did not impose a new standard or require new measures; it merely expressed the public sentiment. The food given in prisons has been coarse and not always sufficient without the necessity of any legal requirement to that effect. But gradually the general standard of prison feeding has been improved and is being based on an entirely different principle, despite the continuance of that law on the statute books. The kind and amount of food to be served is being determined now, not primarily by the principle of making the inmate feel the punitive element of his incarceration but by physiological principles. The human mechanism needs certain amounts of certain kinds of nutrition when at rest, more when working, and still more when performing hard labor. Moreover, the ordinary human being needs, in food as well as in other respects, variety and interest. The prisoner does not carry his sense of guilt and of debt to the community into his daily functions and does not, at every meal, recall that he is under obligations to the community and therefore should satisfy himself with less. If he ever had that attitude it must wear off sooner or later, and then we have the normal situation to deal with, of a person being served his meals day after day and requiring a certain amount of variety in addition to satisfactory quantity. In fact we need not consider the conscious purpose on the part of prison executives to carry the retributive idea into the dietary of the prison responsible for the kind and amount of food that has been served. It is rather a matter of administrative convenience and of finances. It is a commonplace that the most important con-

sideration in managing a prison is to eliminate any possibility of justified complaints by prisoners. Because of the lack of a variety of interests and perhaps because of the rather intensified interest on the part of most prisoners in material advantages and physical comforts, the food has always occupied much of their attention, and they have carried their critical attitude towards society as a whole, into the functions of the prison and, among others, into the matter of food and feeding. We should not therefore be surprised to find that administrative negligence and legislative parsimony on the one hand and the ultra-critical demands of many prisoners on the other hand should frequently have resulted in riots. Such riots are reported in connection with the first state prison. They are a frequent occurrence even today. While full records are not available as to the frequency of such riots in the interval, it is fair to assume that what existed at the beginning of prison history and is still a general occurrence now must have been characteristic of the entire history. It is difficult to understand how, with the clear recognition of the importance of the dietary, prison executives have nevertheless so consistently failed to adopt standards that would obviate such predictable disturbances.

There has been no question as to the obligation of the institution to feed its inmates. The only exception to this appears to have been in the early debtors' prisons. Debtors were not entitled to their keep and had to beg or steal what they got. In some cases the creditor responsible for the detention of the prisoner was required to maintain him. One other type of institution has had little direct dealing with the matter of feeding prisoners, namely, the lockups or station houses. Here prisoners are generally detained only over night, and either have enough money on their persons to buy a meal or are allowed to go without food

until their appearance before the judge. From time to time, and in some places regularly, arresting authorities are permitted to purchase food for prisoners temporarily detained.

DIETARIES

A glance over the food supply to prisoners from the earliest period to date, shows very little important change until the adoption very recently of the new physiological principle referred to, and its execution in some of the institutions, especially the women's reformatories. A slight break in the history is represented by the experiments undertaken in the Elmira Reformatory as early as 1883 on certain special groups, to determine the relation between food and mental or physical output.

The dietary provided by the jailer of the New Amsterdam Prison by order of the City authorities in 1658 under the Dutch regime consisted of the following:¹ "Each week shall be furnished (for every prisoner) three pounds of beef, one pound and a half of pork, one loaf per week, two cans of small beer, in summer per day, and one can of small beer in winter. Potage and cheese occasionally. Whoever requires more must pay for food pro rata." This dietary appears to be sufficient for the physiological needs of the inmates and represents greater variety than some of the prison bills of fare now in use. Considering the fact that in the earliest prisons there were occasional taverns in the same building and that earlier still the jailer had to make what he could by selling food and drink to the prisoner, and further that debtors had to supply their own food as best they could, perhaps the service of beer may be understood. There are some indications that beer was included in the diet of the State prison between 1810 and 1820.

¹ *Records of New Amsterdam.*

A fairly full report of the dietary served in the early State prison is given in "Inside Out". If the writer of that book represents the opinion of the general body of inmates the food was not very satisfactory. For Thursdays, for example, he reports for the bill of fare "a slice of boiled pork and some worm-eaten pea or bean soup." For Sunday "about four ounces of codfish and a couple of potatoes." The quantity as well as the quality of the food seemed unacceptable. He tells of a riot said to have occurred in June, 1818, and attributed to food difficulties. The convicts struck for better food, their action was construed as an attempt to break prison and the militia called in. Convicts were locked in their cells and judges came to investigate. "Confusion reigned for two entire days but not a word was heard from the convicts except "bread, bread, bread." The result of the strike seems to have been that the authorities won out and placed some twenty of the convicts in punishment cells on bread and water for nine to ten weeks.

The daily per capita cost at this time was six to six and one-quarter cents. Beaumont and Toqueville report a similar per capita during their visit to the United States in 1831 and 1832. In Sing Sing they found a per capita of five cents per diem, although the average seems to have been more nearly fifteen cents, and higher at Auburn than elsewhere. The inspectors of the State prison in their report for the same year covered by the author of "Inside Out" (1822) state "that his food is of the coarsest kind which costs six and one-quarter cents per day." The average bill of fare is given by the author of "Inside Out" as consisting of the following: Breakfast, a slice of nearly black rye bread and a pint of cocoa, sweetened with molasses. Noon: "Unsavory and unpalatable soup without vegetables or chicory, half pound of beef from the neck or heels. . . . couple of

refuse potatoes. . . ." For supper: "Plate of mush with a gill of molasses, most generally acidulated, and very often of the most filthy consistency."

It is true that the judgment of inmates must always be taken with more than a grain of salt but acquaintance with present methods or prisons justifies one in attributing at least a fair core of truth to such statements. Prisoners' food is reported as unsatisfactory by the Prison Association in the State Prisons in 1846.¹ Not only was it poor, according to that report, but badly prepared and uneconomical. The Association recommended a resident physician as one way of remedying the situation. Again and again in their inspection of the various institutions in the State they report complaints on the part of prisoners as to quantity and quality of food, especially meat. There were some few exceptions, as for example, the report on Columbia County Jail by John Stanton Gould in 1862.

In a historical review of the matter of food, contained in the annual report of the Prison Association in 1865 there is a rather optimistic tone: "Formerly the prisoners' food was of the coarsest kind, their meat being principally salt beef and pork. They were often afflicted with scurvy. Now they have fresh meat twice a week and fish once. Formerly they had as vegetables potatoes only. Now they have several kinds of antiscorbutic character, and scurvy is unknown among them." The Sing Sing dietary reported by Wines and Dwight in 1867 was much the same as that common nowadays, except that mush and molasses are no longer frequently used. They reported supper as consisting uniformly of bread or mush with molasses; breakfast, of beef hash, bread and coffee; and dinner, of corned beef, three times, boiled beef twice, pork, once and fish, once a

¹ *P. A.* 264, part ii, p. 8.

week, with some kind of a vegetable soup. This sounds not unlike many menus in force today. The meat was and is often presented as a stew or served in the soup.

A great diversity of standards generally existed in different institutions at the same time, a fact that may be well understood from acquaintance with those institutions at present. In the reformatories also, there seemed to have been, from time to time, unsatisfactory standards of feeding. The State Board of Charities, in 1880, after an examination by a special committee of the Board, of complaints presented to it, found that children at the House of Refuge were served bad soup, insufficient vegetables and fruit, and that, as a result scurvy, softened gum and gastritis were prevalent.

In practically all institutions too little of fats, fruit, vegetables and sugar has been and is served now. Outside of women's reformatories there is hardly a penal institution that supplies a reasonable amount of these materials. Only in farm prisons is there generally a sufficiency of vegetables and there only during the summer seasons. In the City of New York five years ago there were practically the same standards of feeding as may be seen in reports of more than sixty years ago. The reorganization of the dietary on a modern scientific basis had been the work of the City of New York of the last few years. The State prisons are still in their almost medieval state and the work of the voluntary dietician in Sing Sing during the wardenship of Dr. Kirchway in 1915 seems to have had little permanent effect there or any effect upon the other prisons of the department as a whole. It is more a lack of intelligence and of humane interest on the part of the responsible administrators in Albany than the unwillingness on the part of wardens that is responsible. At any rate the standards of nutrition in our penal institutions, with the exception of the reformato-

ries, are still far behind the times. Of sixty-two county jails in the State there is only one—the Westchester County Jail at White Plains—that has adopted a reasonable basis for the feeding of its prisoners and that only after pressure and with the coöperation of outsiders.

The commonsense recognition that hard workers need more food is found even in the unscientific administration of unprogressive prisons. Extra portions of meat, coffee, and occasionally of other choice foods have been given to those working in the boiler rooms, on the farms, in blacksmith shops, in unloading coal and similar work. This system has become tradition and has brought about a great deal of petty graft inside the prisons. Those entitled to extra portions have often traded them with their fellow inmates for money or other considerations. A recent investigation of these matters in the State prisons¹ has disclosed the almost incredible extent of this practice. A very considerable portion of the meat, a good deal of the coffee, tea and cheese have been given away under this system. It was found in fact that in some cases a great deal more of certain materials was given as special rations to those exceptional inmates than to the total population. For instance, in one prison 8.6 per cent. of the population actually received 53.2 per cent. of the total amount of coffee distributed, and in another case 14.2 per cent. of the population received 47 per cent. of the coffee. Some of the other ingredients were distributed in some cases at the rate of ten per cent. to two per cent. of the population, 24 per cent. to 13 per cent. of the population and so on. Here again we see a fairly reasonable principle of administration gone to seed because of neglect and indifference on the part of the executives.

¹ *P. A.* 1916.

SPECIAL DIETS

The provision of special food to hospital patients has been generally observed, though with varying degrees of care. In this respect also the interest and energy of the wardens has been the determining feature. We have found cases where a complete and satisfactory special diet for tuberculous inmates was provided in the regulations, but practically none of the materials were received because of failure to requisition them,—pure neglect on the part of physician and warden.

OUTSIDE FOOD

There have been three sources for supplementing prison food. One, by permission to have it sent in by the inmate's family or friends, another by permitting the inmates to buy food from a convenient outside establishment or from a commissary establishment within the prison, and conducted either by the prison authorities themselves or under their general supervision; and third, by supplementing the prescribed rations with products from the prison farm. The first two methods have been very popular, especially in county jails and detention prisons. This practice was so general that frequently the jailer found it a profitable under-

lying to sell the food himself. We have seen in the regulations of the early Dutch prison that prisoners were permitted to buy extra food by paying for it "pro rata." Throughout the history of prisons it has been a very general thing for jailers to establish a regular commissary business, and many of them have made considerable profit out of it. This practice did not come under the prohibition against receiving presents, fees or emoluments, and was therefore allowed to continue undisturbed except in cases where graft scandals resulted. The bringing in of food from the outside has been comparatively limited in the convict prisons

because of the danger of smuggling in contraband material. All food brought in is carefully examined. The stringency of regulations in regard to this practice has varied with different executives and has reached its lowest mark probably during the wardenship of Mr. Osborne at Sing Sing. In recent years there has been a growing disinclination to permit the bringing in of outside food because of the danger of smuggling in habit-forming drugs. In the City Prisons of New York, for example, it has been entirely prohibited and all food purchased by prisoners must be procured through the commissary provided by the administration. The use of products from lands attached to the prisons has been very loosely controlled. Even at this date there are few prisons where an exact accounting is kept of the amount of produce obtained and the amount of it that is sent to the kitchen.

METHODS OF PURCHASING FOOD

The method of supplying food to prisoners has undergone a distinct development. The earliest system consisted of letting out the business of the sustenance of prisoners to the lowest bidder. This was soon replaced by granting of definite allowances or fees for the maintenance of prisoners to the sheriff or jailer. Indications of the minutes of the common council of New York City in the seventeenth century point to the prevalence of this system at the time. Items appearing in the minutes of the common council in 1689, 1694, 1736, 1737 and 1753 show the existence of this method in relation not only to food but also to other items of maintenance, including bedding, candles and the like. The regulations of the first Dutch Prison in 1658 provide that "the jailer shall furnish the prisoner meat and drink according to order and shall receive for it according to the rules granted him therefor." All the work of the sheriff

including the maintenance of the jail, has, during most of the history of county jails and almost to this day, been conducted on the fee basis. It was not until the latter half of the nineteenth century that the movement to make sheriffs salaried officers was developed with success. The attempt to improve conditions existing under the fee system of maintenance assumed first the form of agitation for uniformity. Apparently the fondest hopes of those opposed to the system did not contemplate its actual abolition. We find therefore from time to time suggestions for legislation to create such uniformity. As late as 1885 it is suggested by the Prison Association that a scale of prices be fixed by law. The scale was to contain three grades proportioned to the average number of prisoners in the jail and the following prices were tentatively proposed. In jails where the average number of convicted prisoners is less than ten, \$1.75 per capita per week; in jails averaging between ten and twenty, \$1.50 a week per capita, and in jails averaging over twenty, a maximum of \$1.25 for each inmate a week. A standard of \$3.00 per week was proposed for prisoners awaiting trial or for witnesses. It was further suggested in connection with these propositions that the purchase of extra food on the part of prisoners, whether convicted or not, be prohibited except on recommendation of the physician. It was by slow legislation, county by county, that the sheriffs' fee system was at last abolished. Even when abolished, however, the task was not completed; for in many counties, when sheriffs had been placed on a salary basis, the system of paying him a per capita amount for the maintenance of the prisoners continued. This per-capita was generally determined by special legislation and was paid by the county. In 1917 there were still nine county jails where prisoners were maintained on this plan, the per capita varying considerably, from approximately \$1.75 to about

\$4.00 a week. In 1917 the legislature finally abolished this remnant of the fee system. The fee system is more than a matter of passing interest for, like many other phases of prison administration, its attendant evils were worse than the method itself. It meant opportunity for extortion, cruelty, graft and, most important, the underfeeding of prisoners.

CONTRACTS

In prisons other than county jails the per capita did not obtain a strong foothold. There were two systems generally obtaining in other institutions: one, by contracts running for varying periods, generally one year, and the other by purchases at the discretion of the warden. The contract system was introduced in the first New York State Prison. In the "twenties" the contract varied from six to six and one-quarter cents per capita per diem. There were suggestions that contracts were occasionally let to persons close to inspectors of the State Prison, and the system appears to have been abandoned about 1840. The county penitentiaries, the reformatories and the state prisons after this first trial of the contract system resorted to the second method, namely purchase by the executive at his discretion. This method has been modified to the extent of requiring the purchase of certain large items by public letting. Bidders receive contracts for the particular items in which they are interested, the contract running generally for three or six months. In the case of institutional systems such as the state prison department or the New York City Department of Correction contracts for large items are generally let by, or at least upon approval of the central authority, namely, the superintendent or commissioner. There are certain drawbacks in this system for it renders difficult the purchase of material at the best prices by the utilization of

market advantages as they occur. On the other hand, it represents a safeguard against interference, through politics or personal favoritism. The efficiency of central control of departmental contracts depends upon the intimate knowledge by the central office of the entire system of purchase and feeding involved in the prison routine. In most cases such an intimate knowledge has been found wanting; and, except very recently in the Department of Correction of the City of New York under the supervision of a trained dietician, central control has meant more interference than help.

PLACE OF MEALS

In the first State prison meals were served in the mess hall: "In the refectory the convict generally has a bag or wallet in which he keeps his food. This bag is hung under the table at which all the convicts sit at their meals" ¹ (these bags were often searched and inmates punished if excessive food was found in them). In other early prisons food was probably served in the dormitories. There is no mention of separate mess hall in the Bridewell at New York City, or in the county jails, although constructed on the dormitory or cell-plan.

In none of the county jails at present do the plans include a mess room. In several jails of the state the sheriffs or wardens, on their own initiative, have transformed part of the basement into a dining room. There has been a gradual extension of the system of eating in mess halls which has not however reached complete development even to this day. While all penitentiaries, state prisons and reformatories feed prisoners in mess halls, the city prisons and almost all county jails still continue to use the

¹ "Inside Out."

cells exclusively. In the "forties" mess halls were not yet general in the State prisons. Their introduction was recommended by the Prison Association at the time as a matter of decency, economy and health. In the "sixties" Wines and Dwight report the general use of dining rooms in most of the prisons, "but many institutions contain no such appurtenance." In the larger prisons it has been customary to supply only the morning and noon meals in the mess hall. The evening meal was generally handed out to prisoners on their way to the cells. They would be given their bread as they passed into the cell house and then tea or coffee and perhaps molasses would be distributed to the prisoners in their cells by "hall men". In those prisons where no mess hall was provided at all the food was similarly picked up by the prisoners on their way to cells and supplemented by distribution to the cells. The utilization of mess halls for evening meals in prisons where mess halls are ordinarily used for dinner, is a comparatively recent innovation. Perhaps one of the reasons for the slowness in adopting the mess-hall system is found in the fact that prison executives have always been afraid of outbreaks when a large inmate population was assembled in one room. The history of prison riots shows that generally it was in the dining room that such disturbances were started. It was for this reason, perhaps, more than as a part of the silence system, that talking in the mess hall was until recently persistently forbidden. Communication in the mess hall would facilitate such riots and make them more destructive. It is of course idle to believe that communication has been prevented, for it takes no great ingenuity to develop a method of fairly audible communication with apparently no movement of lips or throat muscles. It is now a part of "reform" to advocate talking in the mess halls. This plan is generally accepted in institutions where

the general discipline is sufficiently good or where the executive is sufficiently confident of his power of control.

The precautions deemed necessary in the mess halls and the attempt to reduce the possibility of communication, have resulted in a style of table arrangement by which all inmates face the same way, sitting at tables twelve or eighteen inches wide. They may thus be successfully watched from both front and back of the mess hall. In this respect also reforms are being instituted and in at least two of our State prisons, regular tables for small groups of eight to twelve prisoners have been installed and talking is permitted. The introduction of talking in the cottage institutions is not uniform. It is permitted in some and not in others. In children's and women's institutions on the cottage plan a dining room has been regularly included among the necessary parts of the cottage so that meals are always taken together.

MANNER OF SERVICE

The mess-hall equipment in all of the prisons has been very poor. No efficient methods have been introduced for serving the meals hot, for preserving as much of the food as possible, or for reducing the amount of labor involved in the collection and cleaning of dishes. Steam-tables, hand food carts and the like were unknown in our prisons until a few years ago. The only efficient organization of mess-hall service was undertaken in Sing Sing under Warden Kirchwey. New tables for small groups were introduced, the kitchen and mess-hall help were clothed in white, food carts were supplied for distribution and collection of food and dishes. For each individual table the food was distributed in big platters or tureens. This seemed to a number of prison men to represent merely a fancy and an undue coddling of prisoners. As a matter of fact, it resulted in

considerable saving of food, for the material left in the tureens or platters could be used again. The whole matter of food and feeding has been permitted for a long time to retain its place among the restrictions automatically imposed as part of the prison regime. The desire to treat prisoners in a less acceptable way than if they were free men has resulted in the disregard of elementary principles of institutional administration that make for saving of food and reduction of labor.

NUMBER OF MEALS

Most of the prisons have served three meals a day and two meals on Sunday on the assumption that workers require three meals a day but that for Sunday rest two meals are sufficient. Prisoners were permitted, however, to keep some food from their Sunday dinner. In one of our reformatories this system of two meals only on Sundays has been maintained almost to the present. A number of county jails still serve only two meals a day.

SUMMARY

To sum up, we may say that the food supply in prisons has really been sufficient but lacking in proper balance, particularly in the insufficiency of fats and vegetables; the bill of fare has been monotonous; not only has the food been the same for certain days of the week but frequently exactly the same food was served several times a week. Thus, stew two or three times a week has been general. Recently we found a county jail in which fish cakes and beans were served regularly three or four times a week. The preparation of food was never, until very recently, undertaken on a scientific basis, and even the employment of a professional cook has been exceptional. Generally the kitchen keeper, assigned regardless of his previous occupation,

has been responsible for the preparation of the food. Often the quality of the food received has been unsatisfactory because of a lack of proper supervision upon receipt of the food. The complaint of tainted meat and worm-eaten dry groceries has been frequently borne out by investigators and inspectors. The distribution of food has often been faulty, comparatively small fractions of the prison population receiving large parts of the total amount of food distributed. A great deal of pilfering has gone on in every prison and a good deal of favoritism has caused further reduction of the amount of food available and of its variety. In other words, the importance of the subject of proper feeding, in respect to the material used, and to the method of service, preparation and variety has been consistently disregarded. There has been therefore, on the whole, no real development in the important features of the problem of feeding prisoners until within the last five or ten years. There has been a certain amount of development in regard to the cottage institutions. In these the very system underlying and the spirit behind the institutions brought with it a more generous and more careful consideration of the dietary.

4. MEDICAL SERVICE

In the outlines prepared for the collection of material for this study there was an elaborate provision under the heading of medical service based on the highest standards now obtaining for medical work in prisons. It contained full inquiries regarding medical staff, functions of the medical department, and the relations of the medical department to the institution. In the course of the study almost the entire outline had to be discarded, for it was found that not before the last decade has there been anything like the kind of medical service provided that would justify the use of an elaborate outline.

PRISON PHYSICIAN

Medical service was made available for institutions in the state from the earliest history. A bill rendered for medical attention to prisoners in the year 1754 by Dr. John Van Bueren amounted to four pounds, thirteen shillings and three pence "for attendance and medicines by him supplied to sundry poor prisoners in the city hall of this city by order of this board."¹ The preceding year there was a bill for some twelve shillings and six pence. It does not appear that his services were provided by law, but merely by action of the city authorities. In the first Bridewell in New York City, when, combined with the almshouse department it had attained sufficient importance and dimensions, a physician was employed who devoted part time to the entire group of institutions under the almshouse commissioners. The law establishing the first State prison of New York provided "that the inspectors of the city prisons respectively shall and may from time to time appoint a physician to attend such prison who shall receive a compensation for the services by him performed to be determined by the inspectors of the State prisons respectively." A similar provision was included in the laws of 1828,² based in part upon the above law, and in part on the laws of 1819 relating to Auburn Prison. The duties of the prison physician were very briefly outlined. They were given more fully in the laws of 1847 which required a daily and monthly report by the physician and a condensed summary of these reports annually to the prison inspectors. He was to keep a daily list of all admissions to the hospital, to examine daily into the quality and state of the provisions delivered to the prisoners:

¹ *Minutes of the Common Council*, vol. v, p. 466.

² *Carlisle's History of Bellevue, etc.*

³ R. S. 1828, title ii, art. i, of part iv, chap. iii, sec. 48.

whenever he shall have reason to believe that any of such provisions are prejudicial to the health of the prisoners he shall immediately make a report thereof to the warden and agent of the prison; he shall also have the power, and it shall be his duty to prescribe the diet of sick convicts whether in the hospital or in their cells or elsewhere and his directions in relation thereto shall be followed by the agent and warden.¹

The monthly report was to contain a record of the age, color, disease and prison occupation of patients admitted to hospital, the kind of medicine administered, their condition upon discharge, the time they had been in the hospital, the number of deaths and causes of deaths, the number of sick convicts not received in the hospital but treated outside and the number of days' labor lost through sickness.

As the duties and work of the prison physician increased and he became the resident officer, the requirements of attendance, as well as his other duties, were increased. The present law (section 138 of the prison law) requires of the physician at each State prison

to attend daily during the proper business hours of such prison and at all times hold himself in readiness to discharge his duties as such physician whenever directed by the agent and warden. . . . To examine weekly the cells of the convicts for the purpose of ascertaining whether they are kept in the proper state of cleanliness and ventilation and report the same weekly to the agent and warden in writing; to examine daily into the quality and state of the provisions delivered to the prisoners and whenever he shall have reason to believe that any of such provisions are prejudicial . . . he shall immediately make a report thereof to the agent and warden of the prison in writing . . . to have charge of the hospital, to attend at all times to the wants of the sick convicts whether in the hospital or in their cells,

¹ Title ii, art. i, par. 63, subdivision 3, prison law 1847.

to prescribe the diet of sick convicts . . . to keep a daily record of all admissions to the hospital indicating the color, etc."

ELMIRA REFORMATORY

The laws relating to the male reformatories also specifically describe the duties of the physicians, including, in addition, the very desirable provision that they shall "examine daily and as often required by the superintendent all prisoners undergoing punishment by solitary confinement or otherwise and prescribe the allowance of food to each prisoner so confined."¹

PENITENTIARY

There was no special legal provision for physicians at penitentiaries but the rules and regulations adopted by these institutions upon their organization regularly provided for a physician and described his duties. In the case of the Albany penitentiary he was to visit the institution "at least every other day and physically examine every sick and complaining prisoner that may be reported to him as such, or whom he may find in the cells or hospital. . . . He shall also visit the institution daily or oftener when the condition of the sick require it; and when sent for shall at all times repair immediately to the penitentiary." He is further required to keep a hospital register and to report annually to the board of inspectors.² The Monroe County Penitentiary, in the first set of rules and regulations adopted in 1856, required a weekly visit on the part of the physician as a minimum. Practically the same phraseology was used in outlining his duties as in the case of the Albany penitentiary.

¹ Prison Law, section 293.

² Dyer, *History of the Albany County Penitentiary*, pp. 41-2.

RESIDENT PHYSICIAN

There is now no resident physician in any of the county penitentiaries except the New York Penitentiary on Blackwells Island which is part of the New York City Department of Correction. The state prisons, male reformatories, and the New York City institutions, all have resident physicians. The Hudson and Albion Women's Reformatories at first had no resident physicians and the attending physicians in those institutions were employed on a fee basis. In each case the physician was a man. That is still the situation in the State Farm for Women at Valatie. Not until 1900 was a resident woman physician appointed at Hudson and in 1907 at Albion. In Bedford there was a resident physician from the first, or practically as early as at Hudson. The private reformatories have not generally had a resident physician and the amount of service rendered by visiting physicians has varied in the different institutions and has been more and more extensive and thoroughgoing in recent years, especially since 1910. In the children's institutions the question of a resident physician has depended largely upon the location of the institution. It is more general to have a resident physician when the school is located outside city limits and not immediately accessible to transportation facilities.

Laws relating to the jails provide that a physician "*must*" be appointed by the Board of Supervisors for each jail. Reformatories for women in their provisions relating to physicians require that they shall be women. The same requirement was included in the law establishing the State Farm for Women, but has been thus far disregarded, both in respect to sex, and in respect to residence. In law as well as in practice, therefore, there has been an increasing demand for medical and preferably resident services.

The medical department then may be considered as one of the original features of administration of penal institutions. Any development in this function would be expected largely along the lines of the general development of sanitary science. Indeed the greater part of such development as has taken place is along that line. Since the growth of scientific criminology, and especially since the infiltration of the Lombrosian theories, there has been a tendency for the medical departments in some of the institutions to spread out beyond the territory legally prescribed for the medical officer. Here and there physicians began to consider their prison population as material for scientific analysis and research. There may have been a good deal of such medico-criminological study early in the prison history, but it did not, until the last quarter of the nineteenth century, bring a new definition of the function of the physician in penal institutions. His old function had been mainly to supply medical treatment for ordinary ailments. There was therefore simply the task of organizing such treatment and making it available at the proper time. The occasional occurrence of stabbing affrays and the like that were bound to occur in prisons, especially under the old repressive system, have required perhaps, a greater amount of surgical work than would occur in other institutions.

The new emphasis brought in by criminology opened up new fields for the institutional health officer. It included the removal of such physical handicaps of inmates of the institution, as might be contributory causes to his criminality. It included, further, the utilization of the prison population as laboratory material for investigation of the causes of crime. For the earlier period, therefore, the study of the medical work of penal institutions should be limited to the consideration of matters pertaining to ordinary treatment and to sanitary supervision.

TREATMENT

The first question then is: how thoroughly and how conscientiously have the physicians of penal institutions provided the necessary treatment or exercised the required sanitary supervision? To judge this we have only limited evidence and must be guided largely by indications from the present. A number of penal institutions are still conducted practically along the same lines as they were fifty or more years ago. We find a great deal of negligence on the part of medical officers in these institutions. The ailments of prisoners are not given the same attention that they would receive on the outside except when serious cases occur, presenting aspects of professional interest to the physician. The qualifications for appointment to the office of institutional physician have been comparatively low. The incumbents have frequently been young physicians who wanted to get a start rather than men with scientific interest. They have, therefore, not been conspicuously devoted to their work. In rare cases only do we find the possibilities of the office of physician really exhausted.

The physician may, in addition to the actual medical service supplied by him, act as a check or control upon institutional treatment and cruelties of officers. If physicians had maintained the standard which in the public mind is attributed to them, the indulgences in cruelty perpetrated in our prisons these many years would have been impossible. For the physician at least has power of access to the facts, and as medical officer he is frequently in position practically to nullify decisions of the warden if in his opinion they are dangerous to the inmates. Our prisoner of 1822 describing conditions in the New York Prison ("Inside Out") depicts the medical officer at the institution as young, ignorant and arrogant. He considers the hospital a fatal place, assignment to which is as good as admission to the "ante-chamber of death."

SANITARY SUPERVISION

The exercise of the physician's functions as sanitary officer may be briefly dismissed with a reference to the consistently unsatisfactory sanitation of prisons reported throughout the last one hundred and fifty years with only a rare protest now and then from the medical officer. The extent and efficiency of his work as sanitary officer is still at this date surprisingly poor. A *pro forma* occasional examination of the cell and of meats and dried groceries is practically all that may be found in many prisons. In many even that is omitted. We find little, if any, interest on their part in such matters as sanitary barbering, the separation at meals, work and recreation of those afflicted with venereal diseases, the provision of reasonable living conditions and diet for tuberculous patients, the supervision and direction of dietaries and the procuring of the necessary special service for eyes, teeth and so on. The employment or invitation of specialist consultants is a comparatively recent development and has probably come through the reformatories, notably the Elmira Reformatory. New York City has been specially delinquent, as compared with the State institutions, in the calibre of medical service supplied. The extraordinary conditions prevailing in the Penitentiary before the establishment of the Workhouse, and similar conditions, which later were largely responsible for the impetus leading to the establishment of reformatories for women, seem to have called forth little protest from the medical officers.

As sanitary officer the prison physician is not much more progressive today than heretofore, even when he does conceive of his medical duties in a broader way than his predecessors. Perhaps that is less necessary now than in the past. Inspection of prisons by outside bodies has provided another means of maintaining standards of sanitation.

In his new scientific function the prison physician is showing greater promise. In one of the State prisons, (Auburn), in the Elmira Reformatory, and, to some extent in the Department of Correction, the examination of inmates from the standpoint of mentality and criminal causation is receiving attention that promises to overshadow the other features of the doctor's work.¹ In the same institutions and also in the children's and women's reformatories an increasing amount of attention is being paid to the necessity of corrective medical work. Surgical operations, correction of visual defects, treatment of tuberculosis and heart disease in a more comprehensive manner, are some of the newer kinds of work undertaken and emphasized by medical departments of prisons.

FUNCTIONS OF MODERN PRISON PHYSICIAN

The medical officer of a modern prison has, then, the following functions to perform if he is to satisfy the requirements of his position. First, he should give the ordinary medical treatment. This implies supervision and management of the hospital with obtaining of necessary consultants, distribution of medicaments for minor ailments, and performance of minor surgery. For the two latter the system adopted has been "the clinic." This means the designation of some time and place at which all ambulant cases may report and be helped, or advised, and in case of more serious trouble be sent to the hospital.

Second, the physician is responsible for the administering of physical examinations to inmates upon their admission to the institution. In most institutions this function has been performed in a very indifferent manner. There is perhaps no single institution in the State that makes a complete

¹ The psychopathic clinics at Bedford and Sing Sing may hardly be considered as growing out of the work of institutional physicians.

medical examination of all inmates on admission. Fairly adequate examinations are made in the reformatories, in one or two of the State prisons, and in the children's institutions. Very superficial examinations are given at the county penitentiaries, and in the institutions of the Department of Correction in New York City. Examination upon admission is a comparatively recent undertaking in penal institutions. No mention of it is made in the past in the comprehensive sense in which we now understand the term. The Elmira Reformatory was probably the earliest institution to raise the admission examinations to the dignity of a necessary institutional function. In the women's reformatories it was not until 1900 that any resident physician was employed (in Hudson). With the acquisition of the resident physician admission examinations became more general. It is not yet practiced in all institutions to anything like a desirable extent.

A third general duty is the observation of cases where insanity is suspected and the taking of proper steps for the transfer of insane persons. In this respect there is a difference between the treatment of felons and misdemeanants. Felons may be transferred to the Dannemora State Hospital on certificate of the prison physician. Misdemeanants may be transferred only after examination by two medical officers not connected with the institution, upon request of the warden or superintendent.

The fourth group of duties includes general sanitary supervision and special vigilance over the application of punishments, especially by solitary confinement on bread and water. In reformatories the law requires, in such cases, a daily visit and report by the physician. The practice obtains in other institutions as well, where not required by law, but it is often negligently carried out. In women's institutions there is added the occasional task of assisting at child-births.

In the Sing Sing Prison and (until recently) in other State prisons, the superintendence of executions also fell within the physician's sphere of work. The transfer of tuberculous prisoners from the State prisons to Clinton and in the Department of Correction to Hart's Island has been made through the agency of resident physicians.

STAFF

For all this extensive and important work of the medical department, what have been the facilities in the way of staff, hospital, equipment and outside coöperation? In the State institutions and for county jails a medical officer is provided by law. In the State prisons, reformatories, and in institutions in the Department of Correction in New York City there are resident physicians. County jails, penitentiaries, and city prisons generally have only visiting physicians. In a few institutions there is an assistant physician and in some few there are nurses as well. In no case previous to the installation of the laboratories in Sing Sing and Bedford has there been a sufficient medical staff for carrying on all the functions of a medical office enumerated above. With the greater emphasis on psychiatric work in the Elmira Reformatory in the last two or three years the routine medical work has been somewhat neglected. At Bedford a new staff and new department were added when the scientific work of the Bureau of Social Hygiene was undertaken. The same has been the case at Sing Sing and in the Department of Correction. The Workhouse in New York City, which has been acting as a central hospital for the entire Department of Correction, has a considerable staff of internes and a medical board of consultants. But the organization has been so poor and the nursing service so unsatisfactory that the opportunity for development of high-grade medical service was never fully realized. It must be admitted

that the salaries and opportunities for advancement offered to prison physicians have never been sufficient to attract men of large calibre for a long period at a time. In those exceptional cases where good men remained in the work it was because of exceptional scientific interest either in the subject as a whole or in some special department.

HOSPITAL FACILITIES

Hospital facilities have been provided in most institutions from the first New York State Prison to the latest one. The hospital in the Greenwich Prison is described as consisting of four ordinary rooms in the northern wing, each containing six bunks with a straw bed in each. Jails of the older type of construction had no hospitals. The newer types, built within the last few decades, almost invariably provide at least one, sometimes two hospital rooms with the same equipment as the cells, or with an additional separate bath. Some institutions regularly remove their sick patients to nearby hospitals. In some institutions the hospitals have been the most ill-equipped and badly conducted departments. This was true especially of the New York Penitentiary about the middle of the last century. It was reported in 1845 by the Prison Association that the female hospital there—an ill-arranged wooden patchwork—had about 130 patients, almost all badly venereal and congested under unspeakable conditions; of the male hospital the report is even worse. The medical officer of the prison was described as harsh and rough.

There seem to be two extremes to which the hospital management tends. One, the kind of abandonment just described; the other, a kind of home for privileged inmates. Perhaps more graft and favoritism has been associated in the history of prisons with the conduct of the prison hospitals than with any other single factor in the administration.

This may be attributed in many cases to the fact that the hospital, with its privileges, has, like other parts of the prison, been under the direct control of an ordinary keeper. The physician controlled merely medical service, not assignment or discipline. At present the hospital is coming to be regarded as a more integral part of the institution and the physician as a more important officer. Illegitimate uses of the hospital are becoming less frequent.

The tendency has been of late to locate the hospitals in separate buildings. The hospital at the Elmira Reformatory has recently been removed from a part of the building where it occupied two floors at the extremity of one of the wings to where it occupies practically an entire building. The small ill-devised infirmaries of the women's reformatories have been replaced by larger and well equipped hospitals. This has been the case especially at Bedford. At Clinton a new building has been constructed for the tubercular inmates. It is to house approximately 350 patients. At the Westchester County Penitentiary and the New Hampton Farms carefully selected parts of the administration building or a building adjacent to it have been assigned for the hospital, and in the plans for the latest State prisons as thorough study has been given to the hospital needs as to any other feature of the institution.

Success in obtaining equipment has not been uniform and has varied very much in the different institutions. The method of paying for medical service and drugs by contract has been long abandoned. It was practiced only in the very early prisons. In the first State Prison the supply of drugs was contracted out in the same way as the food. As a result complaints were not infrequent that medical treatment was denied to inmates in order to bring greater profits for the contractor of drugs the nature of whose contract was more profitable when less medicament had to be supplied. There

is fair generosity in respect to this part of the prison administration now, and more blame attaches to physicians for not asking enough than to the legislature or city authorities for not granting enough.

In the administration of the medical department almost everything depends upon the calibre of the medical officer and the warden. The routine of supervising the hospital and giving clinical treatment is comparatively unimportant if planned with a reasonable amount of intelligence. Where specific charges were made against the medical service it has generally been because of the low calibre of the medical officer and the indifference of the warden.

Indications are that in the future the medical department will be the most important in penal institutions. When it has developed its laboratory work and psychiatric functions, it will become the criminological department of the prison, and as such will be of the greatest importance in outlining the entire career of the inmate in the institution, including his industrial training, education and classification. The work of the psychiatric clinics at Sing Sing and Bedford is tending in this direction.

5. GENERAL SANITATION

To insist upon the importance of maintaining high sanitary standards in the institution would be to emphasize a truism. Indeed, in showing the poor record of prisons in this respect one does deal with the infraction of elementary rules. And in approaching higher standards in more recent years of prison progress one feels not a sense of progress so much as a sense of emerging from depths. The highest standards that we can set for prison sanitation are nothing more than ordinary normal standards that we set for ourselves in our own homes. When we speak of the improvement of physical and sanitary conditions in prisons

it is more like catching up with ourselves or like paying old debts than like growing and progressing. There is one aspect of the importance of sanitation that may need emphasis, namely, the relation it bears to the general administration of institutions. It usually mirrors the efficiency of the administration. Almost invariably a poorly kept and unsanitary institution is also inefficient, cruel and expensive. The chances on the other hand are that a well-kept, clean institution, neat and well-ordered in respect to physical conditions, is also run on an efficient basis and with reasonable humaneness. There are exceptions to this, as there are to most generalizations of that type, but the rule on the whole holds.

Ventilation, heat, light, cleanliness, bathing, washing, and the like, are the chief items in institutional sanitation.

VENTILATION

In the matter of ventilation we have traveled a long distance from the early standards. This applies to cell institutions particularly. For in the case of dormitories, ventilation is a matter of opening windows and therefore depends upon administrative alertness. But in cell institutions ventilation depends primarily on the construction and equipment of the cell house. It is therefore within the cell type institutions that difficulties of ventilation have arisen, and it is concerning those that we first and most frequently hear of unsatisfactory conditions. With the best efforts it is difficult to ventilate a small boxlike compartment like the cell of the Auburn type. The movement of air from the corridors generally strikes only the front of the cell, and does not penetrate. Even those cells facing directly the windward exposure do not have satisfactory circulation of air. To facilitate ventilation in cell blocks there were generally inserted in all the cells small flues leading from the cell

either directly to the outside through the roof, or by way of a general flue situated in the top of the building. But these ventilators seem never to have ventilated to a degree sufficient to alleviate conditions. The experience of Wines and Dwight, in the "sixties," in many prisons of the United State bears out the findings at present, that the movement of air through these flues is hardly perceptible. There is not enough movement in most cases, to have any effect on a lighted match. Moreover, almost universally, prisoners have stopped up these "ventilation flues" which acted as communicating channels for vermin, so that whatever possibility of ventilation may have existed was deliberately shut off. Perhaps these ventilating flues might have worked if a carefully organized system of heating had been applied to create a movement of air. But the situation is at its worst in the summer when heating is out of the question. Dr. John H. Griscom, a member of the executive committee of the Prison Association, after visiting the Auburn Prison in the "sixties" reports as follows:

A striking illustration of the effects of non-ventilation occurred in the State Prison at Auburn about four years ago. During one cold night fires were made in the stoves of the hall after the convicts had entered cells, when the air became so foul that about two o'clock in the morning over forty of them were found in a state of partial or total insensibility and asphyxiation, some vomiting, etc., and they were only rescued by taking them out and dashing cold water over them, rubbing them and giving them fresh air and appropriate medicines.

This one instance tells the story for all prisons of that type. The only solution in their case is the one adopted during the wardenship of Mr. Osborne at Sing Sing in 1914. In order to reduce to a minimum the amount of time necessarily spent in the outrageous cells of that institution, entertainments

of some kind were arranged for every night in the week so that prisoners did not get to their cell until late at night and stayed there barely nine hours instead of the customary fourteen. Modern cell construction, whether of the inside or outside cell type, is fairly satisfactory for ventilation, largely because of the increase in the size of the opening in the cell front. In addition, ventilation flues are also installed in most cases, but they are connected with general flues and these with fans, generally driven by electricity. It is possible thus to create a movement of air through the cells as well as the corridors, regardless of the weather. The poor ventilation which has been generally characteristic of our prisons has contributed as much if not more than any other single feature of the physical conditions in prisons to lower the resistance of inmates to disease, especially to tuberculosis. Tuberculosis appears, by all tests, to exist in at least ten per cent of the population of prisons.

In the middle of the last century much attention was devoted to artificial ventilation and considerable literature on the subject appeared in the early reports of the Prison Association. In very few American institutions were artificial methods actually adopted, despite their successful functioning in many English prisons.

HEAT

Of heating there is little to say. Stoves were used at first but were replaced by steam or hot-water heating just as soon as these methods became sufficiently well known. There was usually insufficient heat supplied in the cell halls, for complaints of suffering from cold in the cells were frequent. It appears that it was well nigh impossible to heat a cell house satisfactorily by stoves. Occasionally it is reported, prisoners' limbs were frozen in bed at night. Under the circumstances no ventilation through windows could, of

course, be thought of, and ventilation was as poor as heating. The type of construction of prisons has been such that stove heating did not constitute a serious fire danger. There are a few instances still extant of stove heating, (one of them in a district prison in the City of New York), but they are rare exceptions.

LIGHT

Of lighting also there is little to be said. Cell prisons have been dark even during the day because the small windows in the outside walls supplied only a dim light for the corridors. The installation of large windows in the outside walls in recent years has helped considerably, but inmates occupy their cells mostly at night and it is therefore the artificial lighting that is of greater importance than the natural light. There were no lights in the individual cells in prisons before the introduction of electricity. They have since then been introduced in most prisons. In some of the county jails, lights are provided only in the corridors; but the tendency is to supply them in every cell. The corridors of prisons were generally lighted at night with a few gas lights and such prisoners that cared to read in their cells had to crouch near the cell door and were then able to read only if fairly near one of the corridor lights.

CLEANLINESS

Under the heading of cleanliness it would be possible to collect enough quotations to fill an entire volume. There are comparatively few reports of inspections that overlook the question of cleanliness and fewer still that express satisfaction with conditions found. The New York City institutions enjoy particularly poor reputation in this respect for the greater part of their history. The first New York State Prison, as a result of the increasing congestion, became more and more filthy. Poor light, bad ventilation, insuffi-

cient clothing, low standards of bathing have helped to keep low the general standard of cleanliness. Most of the jails are regularly reported as dirty especially in the earliest reports about the middle of the last century; yet even then great diversity existed in this respect; some jails being reported as perfectly clean while others as unspeakably filthy. The State Prisons have on the whole, maintained a much higher standard than local institutions. The highest standards have thus far been attained in the reformatories especially of women. Conditions at present are, on the whole, considerably improved; the lowest standards of cleanliness in any institution now are considerably higher than the corresponding standards in the "forties," "fifties," and "sixties" of the last century. It is hard to say whether the vermin pest of institutions has been due to the low standard of cleanliness, or whether the fatalistic attitude toward vermin was responsible for the poor efforts toward thorough cleanliness. But here again the responsibility devolves clearly upon executives and upon the lack of a proper system of inspection.

WASHING, BATHING AND BARBERING

Washing, bathing and barbering are matters in which great diversity of practice has existed. It was impossible in the earlier prisons, with the poor facilities then available, to attain the same standards as may now easily be attained with running water in every cell, fixed basins, and modern plumbing and sewerage. For morning ablutions there have been two methods: either the use of a small movable basin in the cell, with water supplied by hall men; or the provision of a washroom adjacent to the cell block; frequently corridors of the cell house were used as the wash room, with wash stands installed along the outer wall. The supply of movable wash basins in the cells is the early method. Washrooms

and fixed wash basins in corridors are later improvements. In Sing Sing, Auburn and Clinton Prisons the movable basin method still obtains. On Blackwell's Island there are washstands lining the outside wall of the prison corridor. In the House of Refuge there are wash rooms to which the children repair several times a day. In the county jails, until the adoption of the recent style of construction there was no water in the cells and the method adopted varied from jail to jail according to circumstances. The comparatively low census did not require a carefully organized method. Cottage institutions for children have had the same system as the congregate institution at the House of Refuge; a washroom attached to each dormitory has been used by all the occupants of the dormitory. In women's institutions on the cottage plan each room is generally provided with a movable washstand with basin and a pitcher of water.

The supply of soap has not at all times been generous enough in all institutions. Wines and Dwight as late as 1867 severely arraigned institutions for short rations of soap. They recommended flesh brushes as a necessity but these are still at this date practically unknown in prisons. Generally there has been also a very insufficient supply of hot water. Ordinarily there is no hot water except in bathing departments and even there it is not universally supplied. Ordinary ablutions have been quite generally performed in the shops. The rules for requiring regularity of ablutions have varied and have been generally enforced only in the children's institutions. It is difficult to trust in this respect the statements of prison officials who often interpret their desires as rules and assume observance on the same principle.

The standards of bathing have gone through much the same general development within prisons as outside. When there was no running water in homes and but little hot water,

the frequency of bathing was not what we now acknowledge to be the standard. In a great many prisons there was little bathing done in the winter as compared with the summer. We find Wines and Dwight saying in 1867 "It is important, moreover, that the means of bathing should be available in winter as well as in summer. It is admitted that the bath is not so absolutely necessary in cold as in hot weather: yet it is, at all times, refreshing, invigorating and healthful." With a loose standard of this kind only fifty years ago we should be contented with the general standard since then adopted, of the weekly bath. Practically all prisons have for years past required a bath every week. In most prisons a careful system has been introduced for the enforcement of the weekly bath, and in some institutions, baths are actually a matter of record. There is only one institution of the congregate type within the writer's knowledge, namely the House of Refuge, that requires three baths weekly. In county jails there is generally very loose enforcement of the bathing rule, many inmates going for weeks without bathing. But, on the other hand, facilities are available for greater frequency for those desiring it. The early method of bathing consisted in the use of tubs and was very cumbersome, especially because of the difficulty of obtaining and carrying hot water. With the introduction of steam this was partly obviated. A steam pipe would be inserted in a tub of cold water and would in a short time heat it to a proper temperature. The introduction of shower baths is of a comparatively recent date. Even after the introduction of the shower baths (sometimes referred to as rain baths) the supply of hot water often failed. There are instances even at present where shower baths are installed but hot water is not supplied. The three baths weekly of the House of Refuge are in important improvement over their previous methods. In 1879 Superintendent Jones of the House of

Refuge reports one bath per week in winter and two in the summer as the required standard. Moreover, the method is a vast improvement. Shower baths are now installed, whereas in the "eighties" old tanks were still used for the purpose. There were two such tanks large enough to hold, it is reported, 25 to 40 children at a time who naturally used the same water. The State Board of Charities reported (in 1877) that occasionally three hundred children were bathed in the two tanks without any change of water, and that towels were not always supplied for the bath. The bathing facilities in many of the institutions are still unsatisfactory. Sing Sing and the Blackwell's Island penitentiary, for example, still have very poor facilities though ideal in comparison with the standards even of the seventies and eighties. But excellent shower systems have been installed at the Elmira Reformatory, in some of the State Prisons, at the Hart's Island Reformatory and most recently in the Westchester County Penitentiary. In road and farm camps inmates have often been permitted to bathe in rivers and streams and occasionally inmates on Hart's Island were permitted saltwater bathing. These, however, are exceptional situations. On the whole, bathing facilities and regulations are nearly satisfactory except for the traditional weekly bath standard which now tends to be raised.

BARBERING

Barbering has been a serious problem in institutions. Unfortunately, it has in most cases not been so recognized. In the smaller institutions a haphazard method of supplying razors to inmates whenever they need it, at first obtained. During the greater period of their history the larger institutions have had roughly constructed chairs in all the shops and a barber was assigned either to each shop or to a series of shops. The barber would make his rounds and shave

every man in the shop once or twice a week as the institution rules required. Under this system barbering was done not only in the industrial departments, boiler room and the like, but also in kitchen, bakery and messhall. This system still obtains. An improvement was introduced by the organization of the barber class at the Elmira Reformatory which centered barbering in the class room and automatically removed most of it from the other departments. Other institutions have been very slow in learning the lesson. Only recently has it been followed in Sing Sing as a result of the activities of the Mutual Welfare League. A weak imitation was undertaken within the last year in the New York Penitentiary. Practically no sanitary precautions have been observed by barbers so far as can be judged from records. It has only been during the last few years, as the result of agitation and of individual advice on the part of inspectors to executives of institutions, that the system was adopted by a few institutions of supplying an antiseptic solution to the institutional barbers with the requirement that they insert their razors therein, after use in every case. Individual shaving brushes have never been supplied. Prisoners were permitted to buy their own brushes. Little information is available in respect to supply of tooth brushes, combs and other accessories to the personal toilet. Occasionally we find statements, as for example by Wines and Dwight, and in reports of the Prison Association that such things were not supplied. At present tooth brushes and combs are generally supplied only in the reformatories and childrens' institutions, not in prisons for adult males. In the latter the inmates are expected to purchase these articles or to have them sent in by their family or friends. Where prison commissaries have been established these articles are sold. But the standard has not yet been adopted of including these necessities among the things supplied by the institution.

6. EXERCISE AND RECREATION

It would be very pleasant to be able to give a long history of reasonable outdoor exercise and recreation. But here again we meet a phase which has had consideration only in very recent years. So far as we can judge, the only outdoor exercise in the early prisons both of the dormitory type in New York and of the cell type following the Auburn pattern, consisted in marching to and from shops or to and from mess hall. This meant a certain amount of fresh air but very little exercise. Even the normal exercise obtained in walking the short distance was lessened by the requirement of the "lock step" which permitted only very small movements of the limbs and a small range of vision the requirement of turning faces to one side being included in the "lock-step." One wonders whether this amount of exercise and outdoor movement was a "fair exchange" for the small private yards included in the Pennsylvania plan, as part of the separate cell system. The European system of solitary confinement had never been introduced in this country and therefore the traditional single-file walk around the yard with the prisoners several feet apart has never obtained here. The first instance of real outdoor exercise in adult prisons seems to have been the method introduced by Warden Haynes of the Massachusetts State Prison some time before 1866. In the sixties of the last century it was much discussed in New York and the Prison Association Commission of 1866 invited Warden Haynes' testimony on the subject. It consists in allowing the prisoners several hours of freedom in the yards on holidays which meant only a few times in the year: but the results of even this small privilege were reported by the warden as exceedingly gratifying. The introduction of the freedom of the yards on Saturday afternoons and in some prisons on Sundays may be traced back no further than the beginning of the twentieth century.

In fact it began scarcely earlier than about 1910. It was practiced on a small scale in the enclosure at Great Meadow Prison, and it was given its first full-sized introduction after the voluntary incarceration of Mr. Osborn at Auburn in 1913. Since then it has spread to all the State Prisons and to many penitentiaries. In some instances the freedom of the yard is given on Saturday afternoons only. In others, Sundays are included and there have been instances where it was granted daily after the work hours were over. For a time this was the case at Sing Sing and in the New York penitentiary. County penitentiaries have for years allowed a certain amount of outdoor exercise but it was only walking or marching around the yard, and was introduced as relief from the idleness to which a large number of inmates in those institutions, especially in Albany and Monroe counties, were condemned for lack of labor. These prisoners have had to sit in what used to be shops, like children in school, with nothing to do and without permission to speak. It is now acknowledged that at least occasional permission for exercise in the yards is reasonable and it is therefore included in the routine of most prisons. In children's and women's institutions outdoor exercise has been permitted throughout their history. The extent of such exercise has increased but the principle was acknowledged early. In county jails it is only in recent years that outdoor exercise has been permitted. Formerly, and in most cases still, inmates of county jails are allowed to have their so-called exercise in the corridors only. The fact that enclosed yards have existed in only a few county jails would largely account for this. But in those jails where exercise is permitted now, it is generally restricted to the lighter cases or to those serving sentence. Sheriffs are still afraid to take chances with men held for the grand jury or indicted for a felony. In the city prisons of New York outdoor exercise

has been allowed for a long time. Brooklyn and New York had satisfactory yards for this purpose at least since the existence of the present buildings. In the City prison, Queens incorporated in the New York City system in 1912, there has been a spacious yard but the low walls prevented its use for exercise before the addition of some six feet to the height of the walls in 1916.

The whole matter of outdoor exercise is here considered, of course, entirely from the standpoint of health and not as part of the training or physical rehabilitation of the inmate. At the Elmira Reformatory outdoor exercise necessarily followed the introduction of the military system; but here again it was military exercise, not recreation.

The recreation aspect of *outdoor* exercise in the prisons and penitentiaries is a matter of only a few years and has come so largely as part of the same movement for which Mr. Osborne is responsible. In this respect and also as regards the entire question of recreation, there has been a considerable history of fair progress in the children's and women's institutions; but the prisons for men have kept consistently aloof until this very recent movement, in which the ideas of self-government, of the honor system and the confused recognition of the principles of criminology and pedagogy have joined. The introduction of moving pictures and other entertainments is similarly a recent matter in the adult prisons although they have a fairly continuous history in the women's and children's institutions. Gradually the adult prisons and reformatories have recognized that on the whole the same principles apply to them and to their inmates as to the inmates of reformatories for women and children.

There is perhaps only one form of recreation, if we may call it that, which has a long and even history, that is, the use and supply of tobacco. This luxury is found in the Newgate prison at least as early as the twenties. Its use is com-

mented on in a not very kindly manner by the first inspectors of the Prison Association in 1846. It has been an important item in the general discipline of institutions both as a reward, and, by deprivation, as a punishment. It was prohibited in the children's institutions, has been barred in the Elmira Reformatory and until recently prohibited by law for any minors in penal institutions. This law has been repealed because its very frequent infractions in all institutions have caused an unnecessary amount of disciplinary trouble.

RIGHTS AND RESTRICTIONS

The prisoner continues to possess certain rights inherent in his membership in the community and in his very existence as a biological unit, regardless of the community. He carries with him, for example, his right to personal security except in so far as the law specially provides for the disregard of that right. His person is secured by law even if he has been sentenced for life; and injury to his person is to be prosecuted in the same way as if he were outside the prison. He also carries with him certain property and civil rights (despite the theory that the felon loses them), and the prison administration is bound to honor these rights. There is, therefore, in prison administration, a series of inherent rights of the prisoner which a well conducted organization must systematically observe, while there is, on the other hand, a series of restrictions imposed upon him as part of the necessary institutional regime which the prisoner must observe. In most cases there has been no way of checking up and controlling the observance of the prisoner's rights on the part of the institution whereas the entire system of institutional discipline and punishment has been so organized as to ensure complete and uniform observance of the restrictions upon the prisoner, or the institutional rights as compared with the prisoner's rights.

There has been fairly good care taken to secure by law at least the civil and property rights of the prisoners. We find a number of provisions of this nature in the laws of 1828. It is for instance specifically provided there¹ that the person of a convict is under the protection of the law, that his conviction does not work forfeiture of his lands, *etc.*, that it does not disqualify him from giving testimony, that the agent of the State prison is to take care of such personal property of the convict as he has with him upon admission, and so on. It is only in respect to life imprisonment that certain of these rights are considered forfeited on the theory that life imprisonment is a substitute for capital punishment and therefore logically civil death.

The Constitution of the State of New York provides (article 2, section 2) that laws may be passed excluding from the right of suffrage persons who have been or may be convicted of infamous crimes. This section was inserted in the Constitution of 1821 and slightly modified by the constitution of 1846. The provision for the loss of citizenship and the requirement that he be employed at hard labor are practically the only legally imposed restrictions other than the loss of freedom implied in the sentence to imprisonment. Further restrictions have been imposed by real or imaginary prison needs. Thus the prohibition of speaking under the Auburn or Silence System, the "lock-step," the requirement that prisoners look to one side and stand up when visitors go through the shops, the censoring of mail, the limited visits, the limits on clothing, food and furniture, are inventions of the prison regime not specified by law, but sanctioned by tradition. These and other restrictions have been imposed in the course of prison history with more or less regularity until they have become a solid body of tradition in prison administration which it is very difficult to dislodge.

¹ Chapter 1, title 7, part 4, R. S. 1828.

CHAPTER VII

DISCIPLINE

THE word discipline in prison science has had three fairly distinct meanings. When used by prison executives it has generally meant the administration, the smooth running of the institution, the orderly sequence of events in the daily routine, the absence of difficulties with staff or inmates. Good discipline in an institution means in this sense an undisturbed procedure so organized that the presence of the executive head may be dispensed with from time to time and that there is little occasion for the exercise of unusual methods calling for extraordinary administrative ingenuity. It means a relation between the executive and his subordinates and prisoners under which orders are carried out promptly and without difficulties. Discipline has also been synonymous with infliction of punishment. The methods of punishment, the amount inflicted and the immediate results, constitute the second definition of discipline. Discipline in the third sense, as a method of developing self-control and responsible self-activity on the part of the inmates, has had a much more limited vogue. Even when accepted as a proper definition it has rarely been understood and less frequently practiced.

No aspect of prison life, not even that of labor, has so frequently invaded the public interest as the matter of punishment. It has often resulted in investigations which, in turn, have resulted both in specific changes and in general alterations in system. Why the public has taken such in-

tense interest in this aspect of prison work it is difficult to say. It may be that the processes involved in punishments are themselves exciting and arouse curiosity in the same way as executions, and other public punishments practiced in early days. It may be a sense of the impending possibility that any one of us may some day have to submit to the same conditions and suffer the same hardships. It may, therefore, be the interest in the vicarious suffering of our own pain. It may be pure sympathy. Whatever the reason, prison punishments have certainly been a subject of great interest to the general public.

For the prison administrator punishment seems in the first place to be an implicit function of the prison. There is a kind of analogy between the relation of imprisonment to free social life on the one hand, and the relation of "punishment" in prison to prison life as a whole, on the other hand. The relation of institutional punishments to administration has been conceived in much the same way as the relation of the prison itself to the freedom of the community. Prison serves as the corrective in free life. Punishment serves as the corrective in prison. It is not for this reason, of course, that officials of penal institutions have punished prisoners, but this unconscious logic in the back of their minds must have made the infliction of punishment seem simple and natural. The particular purpose of punishment within prisons has been the enforcement of the will of the executive for the sake of "discipline" in the sense of administrative efficiency. Add to this concept the constant presence of fear, and the nature of institutional punishment is better understood.

On the whole prison officials have been afraid of the prisoner. They have regarded him as a potential opponent, as a possible assailant. In this aspect they have seen him not as a single unit but in his aggregate aspect as the whole

population of the institution. Their fear of the possibilities of concerted action by the entire body of prisoners has been carried into their attitude toward the individual prisoner. To avoid having to deal with the entire mass as an organized force they have attempted to smother the will power of each individual and to prevent contact between them. Fear and cruelty have ever been close akin. The development of the prison officials' fear of the prisoner into cruelty to the prisoner is, therefore, easily understood. This fear has been a solid wall blocking the application of ordinary educational principles; it led necessarily to a kind of military repression. The very importance of punishment as a normal function in prison administration must be regarded as the most complete proof of the failure of the principles that require it.

If people were punished every time they spoke or turned around or walked across the street without asking permission, or whittled a stick, or changed their mode of haircut, or a score of other things of that nature, we should have a situation in which cowed servitude and the menace of anarchy were alternately paramount. If, in addition to that, our fellows were to act on the assumption that every time we undertook such a minor change, we really had a very sinister purpose, and if therefore they felt that the whole force of the community should be employed to prevent our indulgence in these unsanctioned changes of position or personal appearance, there would be an intensity of will behind the enforcement of these prohibitions that would quickly lead to a state of *lupus contra lupum*. Yet this is exactly the situation in prisons. The prison has created a maze of *mala prohibita* covering scores of petty details of daily life and resulting in the necessity for a mass of inhibitions throughout the day. All this on the assumption, that with every move and every smile the prisoner conceals a deadly intention. Naturally then the theory has developed

that the commission of those *mala prohibita* must be promptly and universally punished, and punished severely enough to furnish a deterrent. A great body of prison regulations, some of them in print, others transmitted as traditions, is constituted of such petty prohibitions. This has resulted in the organization of a top-heavy system of punishments. When, therefore, we discuss the evils of prison punishments we must bear in mind that they are evil not only in themselves because of their severity and the manner in which they are applied, but even more so because of their existence in relation to actions which in the realm of common sense would constitute nothing bad or illogical. It is well to bear this in mind, for most punishments assume thereby a double evil, and a double bar to the development of a reasonable prison regime.

Punishments proper have been of two kinds: the positive infliction of pain or of discomfort, or the negative aspect, namely, the deprivation of normal comfort or privileges. The former would include confinement in cells, removal of cell equipment or clothing, solitary confinement with restrictions, bread and water diet, corporal punishment, psychological punishment, such as terrorizing, the dark cell dungeon, separation from the inmate body; the latter would include the loss of "good time," of recreation, extra comforts, special privileges, regular food, visits, labor, exercise, etc.

The history of punishments in penal institutions relates principally to those that imply the imposition of pain in some form or other. Their severity and frequency do not always have a direct relation to the kind of offences for which they are imposed. Very frequently we find no conceivable relation between the seriousness of the offence and the severity of the punishment. Offences may run the full gamut of crimes and all infractions of institutional regulation.

Murder, assault, theft, sodomy, are included in the same list with talking, looking in the wrong direction, being on the wrong tier, breaking windows, laughing, possessing in cell articles not provided by the regulations, closing or opening windows at the wrong time, concealing food, improper language, absence of button from clothing, *etc.*, without corresponding variation in the punishment inflicted. Nor are punishments for like offences the same in different institutions. Talking may be permitted in one place and most severely punished in another. Assaults may similarly have varying punishments prescribed, and so with theft, *etc.* In reviewing the history of institutional punishments we need therefore not concern ourselves with the particular infractions which bring about the punishments described.

NEW YORK CITY

In the earliest prison of which we have any record in this State, the one erected in 1642 and for which regulations were prescribed in 1658, there were some restrictions of which we cannot judge whether they were essential parts of the imprisonment itself or additional punishment constituting part of the sentence, or institutional punishment as understood here. For example, in no. 7 of the regulations adopted for that prison there is reference to fetters worn by prisoners. The jailer must not "increase them except by consent of the schout, burgomaster and schepens, unless through cause of a desire to break out; he may then increase them and secure them by day and night." Section 8 of the rules indicates that bread and water diet was used as a punishment. From other parts of the regulations it is clear that silence was imposed and that the breaking of silence was cause for punishment.

The use of fetters or chains in the ordinary routine of the prison does not seem to have been popular in American

prisons except as punishment for institutional infraction and then only in comparatively rare instances.

1796—SOLITARY CELLS—BREAD AND WATER

The law under which the original State Prison was established, permitted explicitly only limited forms of punishment. It provided

that the keepers of the State prisons shall have power to punish all convicts for assaults, profane cursing and swearing or indecent behaviour, idleness or negligence in work or wilful mismanagement of it or of disobedience of all lawful orders and regulations by confining such offenders in the solitary cells of the State Prisons and by keeping them on bread and water only, for such term as any two of the said inspectors shall judge proper and necessary.

Whipping is not mentioned as either permitted or prohibited and no general prohibition appears against other forms of punishment. The prohibition of whipping, which is included in the act, applies to the use of whipping only as a sentence by the court and as an equivalent of imprisonment. The important feature of the above section is the blanket authorization to punish not only for assault and similar offences but also, by implication, for insufficient or poor work.

1819—WHIPPING, STOCKS AND IRONS

In the period covering the years 1797 to about 1847, three kinds of punishment seem to have been of the greatest importance. One, confinement in solitary cells; another, whipping; and the third, bread and water diet. The imposition of irons and stocks, although mentioned occasionally, seems to have been of little importance. The right of prison executives to impose punishments of this nature seems to have been implicit. It is not apparently contained in any

law prior to 1819. In that year it is provided that:¹ if a prisoner in a State prison refuse to comply with the rules of the institution,

It is hereby declared to be the duty of the respective keepers under the direction of the inspectors to inflict corporal punishment on such prisoners by whipping not to exceed 39 lashes at any time or to confine them in solitary cells on bread and water, or to put them in irons or stocks.

Provided, however, that at least two inspectors be present at the time of punishment and that no female prisoner be whipped.

This law, by which the legislature included whipping and irons and stocks among the *explicit* punishments permitted, indicates that both these forms of punishment had in fact been introduced without legal sanction, and that the law of 1819 merely legalized a practice already general. To give further leeway to prison officials the revised statutes of 1828² enlarged and varied the law of 1819 by providing that, in case of violence on the part of convicts, or attempts to escape, *etc.*,

officers of the prison shall use all suitable means to defend themselves, enforce the observance of discipline, to secure the persons of the offenders and to prevent any such attempt to escape.

This is an even more generous blanket license for the imposition of punishment than that contained in the law of 1796, for it is exceedingly simple for officials to consider any movement on the part of the prisoner as violence, attempted violence or attempted escape.

In enumerating the "internal punishments" in the New York Prison, the author of "Inside Out" mentions the solitary cell with or without being chained on one's back to

¹ L. S. N. Y. 1819, c. 83, sec. 3.

² Part iv, c. 3, title 2, art. 2, sec. 59.

the floor and on bread and water diet, Sunday cell, block and chain, bread and water and whipping. We see in this list a new punishment: the block and chain. He describes three punishments and the infractions for which some of them were imposed as follows: the Sunday cell is under the direction of the principal keeper. It is five feet high, three and one half feet square, has no ventilation except the slight opening caused by the wear or decay of the step at the front of the door. One can neither stand nor lie in the cell. He indicates that as many as six had been placed in a cell at a time for as long as ten days, often handcuffed, always on bread and water, and unknown to the inspectors. The block and chain he does not describe but it consisted presumably of what later became known as the tying-up or cuffing-up process. It was inflicted for smoking, possessing tobacco or being impudent. Whipping was administered for minor offences, including "deficiency of work," (the flogger was paid for the job). He quotes abuses, names inmates in whose cases the inefficiency of the amount in the weaving shop constituted the whole offence (and adds that the bad weaving was often caused by the poor material). He states that he himself had been punished by bread and water diet for twelve days for the same reason.

According to Beaumont and Toqueville whipping was practically the only punishment practiced in 1832 in New York State Prisons. At Sing Sing its application was very frequent and was occasioned by the least fault. In explaining it the authors say: "It effects the immediate submission of the delinquent; his labor is not interrupted a single instant; the chastisement is painful but not injurious to health; finally, it is believed that no other punishment would produce the same effects." Whipping at Auburn, while also practiced, is stated to be extremely rare. They quote the opinion of practical prison men of the time that it would be impossible to manage prisons without the whip.

The legality of whipping was established by a decision of Judge Walworth in charging a jury at the court of Oyer and Terminer, September 1826,¹

that confinement with labor merely had no terrors for the guilty; that the labor which the human body was capable of performing without endangering its health was but little more than many of the virtuous laboring class of the community daily and voluntarily perform for the support and maintenance of their families. That to produce reformation in the guilt or to restrain the vicious from the perpetuation of crime by the terrors of punishment, it was absolutely necessary that the convict should feel his degraded situation. . . . That the system of discipline adopted by the inspectors under the sanction of the laws was well calculated to have the desired effect of reforming the less vicious offenders and of deterring others from the commission of crime. . . . That it was however through terror of bodily suffering alone that the proper effect upon the mind of convict was produced. . . .

and therefore the prison keeper of the Auburn Prison charged with whipping a convict was acquitted. There appears to have been no strong public sentiment opposed to this form of institutional punishment and the French visitors themselves do not seem to have been much disturbed by it. At both Sing Sing and Auburn they report an absence of written regulations, so that the executives had to conform only to verbal prescriptions received from the inspectors. At Auburn the superintendent or warden alone had the power to punish, but at Sing Sing he delegated his power to subordinate officers. The presence of inspectors originally required by the law appears to have been disregarded because of the impossibility of requiring the inspectors to spend the amount of time at the prison which that rule would have required. It became general for keepers at Sing Sing

¹ From report by Gershom Powers, 1828.

to assume the responsibility for whipping prisoners and the subsequent uncontrolled cruelty may therefore be well understood. At Sing Sing even the turnkeys had the power to lash prisoners on the analogy largely of "the father's power over his children, the teacher's power over his pupils, the master's over his apprentice, and the sea captain's over his crew."¹

In summing up this aspect of prison discipline Beaumont and Toqueville say:

It must be acknowledged that the penitentiary system in America is severe; whilst society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism. The citizens subject to the law are protected by it; they only cease to be free when they become wicked.

HOUSE OF REFUGE 1832

In the meanwhile a somewhat modified system of punishments was being established in the House of Refuge. The punishments permitted there were enumerated in 1832² as follows:

1. Privation of play and exercise.
2. Sent to bed supperless at sunset.
3. Bread and water for breakfast, dinner and supper.
4. Gruel without salt for breakfast, dinner and supper.
5. Camomile, boneset or bitter herb tea for breakfast, dinner and supper.
6. Confinement in solitary cells.
7. Corporal punishment "if absolutely necessary."
8. Fetters and handcuffs "only in extreme cases."

The superintendent is given entire discretionary power

¹ Report by Mr. Gershom Powers, 1827, p. 11, quoted by Beaumont and Toqueville.

² Rules and regulations included in documents relating to the House of Refuge, p. 297.

and is *required* to impose punishment in such cases as disobedience, or striking or resisting officers. In the case of female inmates it was provided that corporal punishment should take place only in the presence of the matron. The French visitors, Beaumont and Toqueville, who included the House of Refuge among the institutions studied, recite practically the same set of punishments but without giving the dietary details. They do not state how frequently corporal punishment was inflicted then, but give no indication of the abuse of the power. In this institution we see for the first time the introduction of the form of punishment by deprivation of privileges such as play and exercise. There have been other institutions also (including State Prisons), where deprivation of privileges was exercised, not as an independent form of punishment, however, but as a corollary to other punishments. For example, the imposition of solitary confinement in the State prisons has meant also the loss of commutation or "good time" and a monetary fine to be deducted from the earnings of the prisoner. But no evidence exists that the withdrawal of privileges alone was used as a punishment. It does not appear that the system of punishment at the House of Refuge affected in any way the State prisons or other penal institutions for adults.

AGITATION AGAINST CORPORAL PUNISHMENT 1844-7

The organization of the Prison Association in 1844 marks the beginning of a concentrated movement against the punishments obtaining in prisons at that time. Their findings show that in addition to the traditional whipping and solitary confinement, new punishments, not authorized by law, had been introduced and were widely practiced.¹ The activities of the Prison Association seem to have had a real

¹ P. A. 1844.

effect upon the State prisons in the reduction of corporal punishments. But in 1846 this reform is still designated by the Association as precarious, and the need is felt for legal prohibition of certain forms of corporal punishment. A table in the annual report of the Prison Association for 1846 shows the decrease of such punishments from 1845 to 1846 and indicates incidentally the full list of varied punishments in vogue at the State Prison at the time.

PUNISHMENTS IN STATE PRISONS.

1845-6.

(P. A. 1846, part ii, p. 36.)

	Clinton 1845.	Clinton 1846.	Sing 1845.	Sing 1846.	Sing 1845.	Auburn 1845.	Auburn 1846.	Auburn 1844.*
With the cat			2	414	267	1278	258	..
Bath		2	111	82	..	..	..	..
Deprivation of bedding			18	39	..	..	..	..
Deprivation of food			191	103	..	..	..	..
Deprivation of tobacco . . . . .			..	..	8	..	..	..
Deprivation of books . . . . .			..	..	3	..	..	..
Solitary confinement		14	42	63	1	..	..	..
Ball and chain . . . . .			..	..	10	..	..	..
Head shave and ball, etc.			3	..	..	..	..	..
Cat and solitary confinement		1	..	..	..	..	1	..
Solitary confinement and chain		3	..	..	..	..	..	..
Electric shock		1	..	..	..	..	..	..
Admonished . . . . .			..	..	116	..	..	..
Largest number of lashes to one individual. . . . .			..	60	..	..	..	..
Whole number of punishments	40	36	776†	691‡	435	..	844||	..
Aggregate number of stripes . . . . .			..	4400	2421	588	1237	..
Aggregate number of violations	40	36	776	691	1279	311	..	..
Punishments for talking . . . . .			..	329	..	491	115	..

* Included in the 1278 for 1845.

† Of these, 414 were punished with the cat and 362 without it.

‡ Of these, 267 were punished with the cat and 424 without it.

§ Result of examination by Inspecting Committee of Prison Association

|| Corporal punishment seems to have been the only kind inflicted, except in two instances—in one of which the dungeon was substituted, and in the other both the dungeon, deprivation of tobacco, and loss of meals were added to castigation with the cat.

LAWS OF 1847

In the revision of the prison laws in 1847 (section 45) the only form of punishment retained was solitary confinement. But no specific prohibition was included to prevent the practice of other forms.

Section 44 made it the duty of inspectors

to cause to be erected of stone and in such manner as to render them safe and secure, in each of the state prisons of this state separate cells or rooms, not less in their dimensions in the clear than 496 cubic feet, not exceeding 20 at Sing Sing Prison; ten at Auburn Prison, and five at Clinton Prison.

Section 45 provided that:

whenever any convict shall be found incorrigibly disobedient to the rules of either of the state prisons it shall be the duty of the warden thereof to confine him in one of the solitary cells provided for in the preceding section at hard labor, and when practicable he shall, when so confined, be employed at the same trade and business he shall have been employed in immediately previous to such solitary confinement.

It was further provided by section 108 that

no keeper in any state prison shall inflict any blows whatever upon any convict, unless in self-defense or to suppress a revolt or insurrection. If in the opinion of the warden of such prison, it shall be deemed necessary in any case to inflict unusual punishment in order to produce the entire submission or obedience of any convict, it shall be the duty of such warden to confine such convict immediately in a cell upon a short allowance and to retain him therein until he shall be reduced to submission and obedience. The short allowance to such convict shall be prescribed by the physician whose duty it shall be to visit such convict and examine daily into the state of his health until the convict be released from solitary confinement and returned to his labor.

Let us compare with these provisions of the laws of 1847 the present sections dealing with the same subject. Section 153 of the prison law reads,

The punishments commonly known as the shower bath, crucifix and yoke and buck, are hereby abolished in all the State prisons of the State. No guard in any prison shall inflict any blows whatever upon any prisoner unless in self-defense or to suppress a revolt or insurrection. When several prisoners combined or any single prisoner shall offer violence to any officer of a state prison or to any other prisoner or do or attempt to do any injury to the building or any workshop or to any appurtenances thereof, or to any property therein, or shall attempt to escape or shall resist or disobey any lawful command, the officers of the prison shall use all suitable means to defend themselves, to enforce observation of discipline; to secure the presence of the offenders, to prevent any such attempt or escape.

Section 154; solitary confinement on short rations. If in the opinion of the agent and warden of such prison it shall be deemed necessary, in any case to inflict unusual punishment, or in order to produce the submission or obedience of any prisoner, it shall be the duty of such agent and warden to confine such prisoner immediately in his cell, upon a short allowance and to retain him therein until he shall be reduced to submission and obedience. The short allowance of each prisoner so confined shall be prescribed by the physician whose duty it shall be to visit such prisoner and examine daily into the state of his health until the prisoner be released from solitary confinement and returned to his labor.

CORPORAL PUNISHMENT AFTER 1847

The law of 1847 abolished the use of a cat or whipping by failing to permit it and by prescribing the particular punishments that the legislature was willing to sanction. The present law prohibits specifically the use of certain punishments. The reasons for the latter are to be found in the developments that took place after 1847. Prison executives

who missed the apparent advantages of whipping found substitutes, which, while not openly permitted, were at least not prohibited by law. In the years following 1847 a great deal of punishment of this kind was practiced. In the Auburn Prison the douche was immediately substituted for whipping. In his report at that institution for 1847 the physician, Dr. Fosgate comments on this new punishment as follows:

I am an advocate for the use of cold water if properly applied, but to confine a convict in the stocks tight and firm with his head thrown back and then douche water upon him is decidedly more dangerous and cruel than the cat. The muscles involuntarily shrink upon the application of cold but here they must bear the shock in all its severity. The first effect is strangulation to a most painful degree, the next is aberration, convulsions, congestion of the brain, liver and bowels. The blood receding from the surface is thrown suddenly and violently upon the organs, and the above result is inevitable.

The yoke also was introduced, but soon prohibited. Dr. Fosgate, of Auburn, testifying before a legislative committee in 1852, further describes the new means of punishment devised by prison men as substitutes for whipping and gives instances of their uses and effects.¹

¹ "To convey a just idea of the shower bath as a means of punishment, as well as to disabuse the community in regard to it, it will be necessary to describe as well as may be the instrument itself, so that it can be compared with the bath in common use as a means of luxury. The form of the machine is that of the common stocks, with a reservoir of water above it, having a head fifty-four inches, measuring from the surface of the water to the perforated plate at the end of the discharging tube. The offender, being stripped of his clothing, is placed in a sitting posture in the stocks, with feet and hands securely fastened, and his head contained in a sort of hopper, the bottom of which encircles his neck so closely that the water will not run off as fast as it can be let on, the water being under control of the keeper by means of a cord attached to a valve in the bottom of the reservoir. From the

In 1853 the warden of the Auburn Prison reported the perforated plate the water falls about eighteen inches, when it strikes the head of the convict, immovably fixed, thence passing over the whole surface of the body. When the reservoir is full, the force of the blow upon the head is nearly equal to a column of water seventy-two inches in height. This force is somewhat reduced by the intervention of the perforated plate, a late modification in the instrument. To the mechanician, who calculates the influence of mere matter upon matter, the power of this column of water must possess considerable importance. But to the physiologist, who can alone judge with any degree of correctness of the influence of a stream, generally at 32 Fahrenheit, falling upon the head and thence covering the whole body, the suffering induced and danger incurred must appear momentous in the extreme, as the following examples illustrate. Convict No. 5066, aged about thirty years, of sanguine nervous temperament, was brought to the hospital in a perfectly unconscious state, and with convulsive twitchings of the muscles. His mouth filled with frothy saliva, no perceptible pulsations in the radical artery, but little external heat, and very imperfect respiration. He had been showered, as I was credibly informed, with about two pails of cold water. His body was rubbed with stimulants and warmly covered with blankets. In about two hours deglutition was partially restored, when brandy and other stimulants were administered. In four hours, after entering the hospital, his consciousness returned. This individual was so nearly destroyed that he had passed into that calm, quiet mental state that immediately precedes death by drowning. He said that at least he has the delightful sensation of sailing and then it was all over. He suffered from cramps in his lower extremities for about three months after.

"Convict No. 4959 was showered previous to my connection with the prison. He told me that, while in the stocks, "his head aches as though it would certainly split open, when, all at once, it suddenly stopped and he felt no more pain." He came out of the stocks an insane man, hopelessly incurable, though at times he converses understandingly about the punishment.

"Convict No. 5669 was showered with six pails of water discharged on the head in a half-inch stream. Shortly after he fell into convulsions, from which he emerged with a mind totally destroyed. He was pardoned in about three months afterwards, and a report subsequently reached the prison that he did not long survive.

"The kind of punishment next in frequency inflicted in this prison is yoking. The yoke is formed of a flat iron bar, four or five inches wide and from five to six feet in length, with a movable staple in the center to encircle the neck and a smaller one at each end to surround

punishments inflicted in his institution during the year as including the following:¹

Shower bath 223 cases, yoke 88, solitary confinement 55, seated on floor 19, head shaved, ball and chain 2, bucking 10. The warden of Sing Sing for the same year reports: showered 247 cases, sheared and showered 4, solitary cell 121, solitary cell and showered 3, ball and chain solitary and showered 2, total 377. In Clinton Prison there were: showered 81; bucked 34; solitary confinement 17, total 122. Bucking is described as a punishment borrowed from the army and consisting of the following: fastening the wrists together by a chain; into the ring in the chain an iron bar is inserted; the bar is passed between the legs, and the prisoner is then compelled to sit on it from half an hour to four hours or more. The solitary confinement alluded to

the wrists. All these staples are so arranged that by turning screws on their protruding ends, on the back of the iron bar, they can be tightened to any degree deemed expedient. The weight of the lightest yoke is thirty-four pounds avoirdupois, and some of them, I believe, weigh forty. The principal objection to this punishment is, that the yoke bears too heavily on the cervical vertebra. Most persons are aware of the unpleasant and, in fact, unsupportable sensation produced even by the weight of the unbuttoned coat and vest pressing upon the back of the neck. Under the weight of this instrument the convict cannot retain the erect posture for even a few minutes consecutively, but is forced to bend forward in his continual writhing, which brings the entire weight of the bar upon the lower cervical vertebra. The arms are generally stretched to their full length, and from steady tension of the nerves are benumbed, while the hands turn purple and at times become much swollen. In several instances I have placed my fingers beneath the yoke, and found the pressure so great that it was actually painful to me. Both as an instrument of torture and death, it is, confessedly, more dangerous in the hands of uneducated men than the lash.

"The douche and the yoke possess not even such doubtful advantage, and should at once be forbid by law. The executive of the State has already, officially, declared that there is no law for their use, but notwithstanding this, the yoke and the douche are ever-ready instruments of punishment and torture in all our State Prisons."

¹ P. A. 1853.

in these cases is the old dungeon type however, not that required by the law of 1847. The cells required by that law were not constructed until late in the century.

The failure to prohibit punishments by name had the result of uncontrolled license in the invention and application of new punishments without the possibility of legal prosecution. There was therefore an unabashed indulgence in these unusual punishments regardless of public opinion or its effect upon institutional efficiency. On the other hand, the failure to permit whipping and other punishments in the law of 1847 led to some peculiar developments of a different kind. We find in some of the reports of the Erie County penitentiary, indications of inmates suing their keepers after discharge for injuries inflicted upon them in the course of punishment. In the annual report of the Erie County penitentiary for 1860 we find the following passage (page 5):

One item of expense has been forced upon this institution that threatens to become quite serious unless checked in some way. It grows out of the prosecutions that the superintendent and his subordinates are subject to by prisoners who commence suits against them for private damages for any punishment that may have been inflicted upon them while prisoners. . . . Damages obtained for such clients are usually absorbed by the lawyers bringing the suit who rely upon the honor of the Erie County to protect its officers in the just and legal discharge of their duties. If the discharged prisoner fails to obtain judgment, or does not through his attorney bring the suit into court, there is no means of collecting costs of the plaintiff. Of the foregoing liabilities (referring to financial statements of institutions) \$75.00 has been paid as costs in a suit where the plaintiff allowed judgment to be taken against him by default. Your commissioners would recommend your honorable board (of supervisors) to petition the legislature to pass a law requiring security for costs before suits must be commenced against

the superintendent of the penitentiary or his subordinates for punishments inflicted upon prisoners while in the penitentiary.

In the same report mention is made of a counsel's bill presented to the commissioners of the Erie County penitentiary for services in defending a keeper and underkeeper in a suit for damages arising from injuries sustained by a former prisoner by being wounded while endeavoring to escape. A verdict of \$439.00 had been rendered. We find no similar actions in other prisons. It is not quite clear why such action was not taken elsewhere unless perhaps out of fear of revenge by officers of the institution.

CONTINUED CORPORAL PUNISHMENT IN STATE PRISONS AFTER 1847

In 1863 an inspection committee of the Prison Association reported the use in Sing Sing of the iron cap (a form of punishment by public disgrace rather than real hardship) inflicted for talking, the dark cell with bread and water, the yoke or crucifix (which is commented on as not cruel), the shower bath which is not disapproved except in the frequency of its application, and the ball and chain. In 1864 the Prison Association still reported the use of the buck although forbidden at that time in all of the State prisons by executive order of the inspectors. The physician of the Auburn Prison at this time, Dr. Button, is quoted as favoring the reintroduction of punishment by whipping. In 1865 a special investigation of a case of cruelty reported to have taken place in one of the State prisons brought forth evidence that the inmate in question had been showered, crucified and yoked, all within ten or twelve days. The special investigation of the prisons by a commission of the Prison Association in 1866 made a determined effort to

ascertain what kind of punishments were practiced at the time and to what extent; the testimony before the commission would seem to indicate that there had been little if any reduction in the amount and kind of punishment. It very clearly brought out the fact that the entire matter depends upon the personality and calibre of the warden. The testimony of some of the officers who had been employed during the successive wardenships showed a constant "oscillation between barbarity and humanity" from warden to warden. Under Robert Wiltse in (1836) Sing Sing "fear and force were the only principles employed Cruel and unjust punishments were inflicted, labor was made irksome, escapes were of almost weekly occurrence prisoners preferring death to despair." In 1849 D. L. Seymour ushered in a gentle, kindly administration, under which prisoners were orderly and cheerfully performed their tasks. The new board of inspectors appointed Elam Lynds to succeed Warden Seymour, whereupon cruel punishments and insubordination returned. Harmon Eldridge followed Lynds, eliminated cruelty but failed to bring a positive good spirit. He was followed in 1857 by Beardsley under whom, it is stated, the most inhumane punishments were resorted to. In 1862 Beardsley was relieved by Hubbell, by far the best, most progressive and kindest warden at the institution up to that time. It was a question, then, of wardens, and to some extent of managing authorities.

In 1869, as the result of an aggravated and scandalous piece of cruelty that was emphasized by the public press, and came to the attention of the legislature, a law was passed¹ prohibiting the use of the shower bath, crucifix, yoke or buck, and providing a penalty for violating the prohibition. But an investigation in the same year, after the passage of

¹ Chap. 869, laws 1869.

the law, showed that punishments of that nature were still continued and new ones invented. The authorities of the State prisons were much concerned with the danger to the discipline of the institutions by reason of the sudden discontinuance of these old reliable punishments, and proceeded to devise substitutes just as their predecessors had, when whipping was discontinued by the law of 1847. At Sing Sing and Clinton a new method called the hooks was devised; hooks were driven into the wall and the convict's hands, placed behind his body, were fastened with irons and then drawn up so that his toes just touched the floor. This is the way the authorities circumvented the law by which only the dungeon had been left as a form of punishment.

In 1890 another special investigation, this time of the Clinton Prison, by a commission representing the superintendent of prisons and the Prison Association, called forth by reports in the public press of highly drawn stories in that prison, found the following: that corporal punishment in the prison was being administered in four modes:

namely by paddling, by pulleys, by process of stretching on one arm, successively in point of time, and by dungeon or screen cell. . . . Paddling was mostly but not entirely discontinued after an order of Superintendent Baker approved by Governor Cleveland, dated January 16, 1883, was issued forbidding it; but most if not all such cases of paddling subsequent to the said order were reported by the warden to the superintendent. The pulleys which then became the substitute for the paddle were destroyed, with the paddling-chair and other contents of the guard room by a fire on January 1, 1891. Since the fire the process of stretching on one wrist has supplanted both paddle and pulleys.

The commission proceeded to describe the last mentioned

method, sometimes referred to as "tying up" as well as the other punishments mentioned.¹

¹ The following extracts from the Commissioners' report are of interest:

"The last-mentioned mode of punishment, designated by the officers as the "tying up" process, has been by means of a cord, secured with or without a handcuff to one wrist of the subject and fastened to a fixture overhead. The tension has been such as to strain the arm painfully when long continued, even with the feet left to rest entirely on the ground, and in many cases, such as to lift the heels, and in other cases such as to raise the balls of the feet from the ground. The duration of this "tying up" process, when under tension, straining the patient to the toes, has been from a few minutes to an hour or more, and under less painful tension has been from the "all right" bell, early in the evening, prolonging indefinitely, sometimes until morning or for eighteen hours or more.

"This punishment usually has not been continued in the presence, even if commenced in the presence of the warden or the principal keeper or the prison physician; and sometimes it has been administered by inferior officers at night to stop noise or disturbance without special order from the warden or the principal keeper, but under a general power from the principal keeper.

"The punishment by pulleys was by means of a cord about one-quarter of an inch in diameter bound about both wrists brought together, and drawn upon an overhead system of pulleys, lifting the subject entirely from the ground, with his whole weight suspended on the small cord about his wrists. The duration of this process of punishment, which in persons of the same weight denotes the degree of its severity, was from two minutes or less to fifteen and twenty-five minutes and more, one case shown reaching fifty-five minutes. It is proved that several of the cases in evidence fainted, and it is in the testimony of officers that in their opinion other cases of apparent fainting were simulated, the principal keeper giving fifteen or twenty occurrences where, in his judgment, the symptoms of fainting were feigned. It is in evidence that in the year 1885 one case of great length was attended by bets, or offers to bet, on the part of two inferior officers on the probable endurance of the subject. Hon. Goodwin F. Brown, the former pardon clerk of Governor Hill and Governor Cleveland, in the discharge of the duties of his office, obtained the impression that except in rare cases the maximum limit of the time of such hanging was two minutes. The evidence shows that, assuming the form of punishment to be proper, in no case should it exceed from five to ten minutes.

After this time the application of that class of punish-

"Punishment by paddling was administered in the guard room. The paddles were made of two thicknesses of sole leather stitched at the edges, which were three to four inches wide on the blade, and, with the twisted handles of the same material, were about twenty-eight inches long. The blows by means of such paddles were inflicted on the bare flesh of the buttocks of the subject, who was in position bent across a frame called a chair or horse with his face downward, his feet encased in fixed shoes at the base on one side, his arms secured by wristlets attached to a bar about one foot from the ground on the other side, and his thighs and back fastened with leather straps. This, or a similar device, was formerly used in other prisons. Though the number of blows was kept under thirty, perhaps, in the majority of cases it was not an extraordinary occurrence in which a prisoner received forty or fifty blows; and among the particular cases in evidence it is proved that one convict received 100 blows on one occasion since the said order was issued enjoining any and all paddling, to wit, in the year 1885; and another prisoner in the month prior to the issue of said injunction, to wit, December, 1882, and within a period of ten days was subjected to five different paddlings, receiving on each of two given days over 200 blows. Each of the two subjects of the paddling here specified was insane. The late prison physician, who was in office until the spring of 1889, was present at both these punishments, and advocated one and consented to the other, though by statute he had authority and it was his duty to prevent them. Another case of paddling occurred in the fall of December, 1890, on the charge of feigning insanity; for which the warden, on reporting the same to the Superintendent of State Prisons, was by him reprimanded, as appears by the records in his office. The first Superintendent of State Prisons obtained the impression that the number of blows never exceeded thirty. If the punishment should be assumed to be legal and right, the proper maximum limit would be five to ten blows, as the evidence shows.

"These three modes of punishment, respectively, by paddling, by pulleys and by process of one wrist, were frequent, being, besides many lesser punishments, on the average several in one week, and in the great majority of cases for failure in work. But the evidence shows that such forms of punishment, if they could be construed to be legal and justifiable, should be administered under the most definite restrictions as to severity and admissibility, and should be reserved, on account of their moral effect, for grave offenses and rare occurrences which in number and degree would be a small part of the actual cases established in this prison.

"The punishment by solitary confinement on short allowance has

ment was gradually reduced, and the use of intense and prolonged forms of solitary confinement with a reduction of the personal comfort supplied to the prisoner, became the prevalent form.

COUNTY PENITENTIARIES

The penitentiaries were organized after the abolition by law of the use of whipping, and when solitary confinement and bread and water diet were the only legally approved methods of punishment. But the general authorization empowering prison executives of the State prisons to take all necessary means for effecting the submission of inmates

been applied, not in ordinary cells, but in dark cells or dungeons, and in screen cells. The screen cells have sometimes been used for detention, but when used for punishment have differed from the dungeons, which are totally dark, only in the admission of a few rays of light; and each sort of punishment cell has been devoid of all furniture except a bucket, not even a board having been provided for protection against the stone flagging. The prisoners here and elsewhere call these cells coolers. The short rations in these cells are four ounces of bread and one gill of water every twenty-four hours. The ordinary periods of such confinement have been from two to five or six days. The evidence shows neglect by the late physician, Dr. Smith, in making official visits to convicts so immured, and one case of oversight by the present physician, who has, however, not been shown to be negligent in any other case. One old case of incarceration in January, 1880, with full rations of bread and water, for three and perhaps six weeks, followed within a short time by similar confinement on bread and water for ten or fourteen days or longer, was established by the proofs; and it is in evidence that afterwards the patient was kept in close confinement in the screen cell but with bed and on ordinary diet, for a few months and then by the late physician, soon after the beginning of his official administration, admitted to the hospital, where a few weeks subsequently he died of a disease which the evidence does not show was caused by the confinement, but may or may not have been aggravated by it. The offense of this man was refusing to work and assaulting an officer.

“Some of the inferior officers have at times struck the prisoners, and to some extent the principal keeper has given to keepers power to “cuff up” prisoners. . . .” (P. A. 1890-91, p. 50 *et seq.*)

was still, as it is now, on the statute books. In the rules and regulations adopted by the penitentiaries, we see the status of punishment at the time well represented. The Albany County penitentiary, the first to be established, contained in its rules and regulations the following:

The superintendent is authorized to employ and permit the use of weapons by the keepers or guards of the prisoners to put down insurrection by force, and to prevent escape *at all hazards* from the penitentiary.

The object of this institution being to effect the moral reformation of the culprit punishment will be resorted to as rarely as necessity will admit; the rules of the prison are nevertheless to be observed and maintained inviolate, and all infractions thereof or any resistance to the lawful commands and authority of the keepers, shall subject the offender to solitary confinement in a darkened cell and to rations of bread and water (or to be showered with cold water) at the discretion of the superintendent; no such confinement however shall exceed ten days for any offence and in every doubtful case the proper medical authority shall be consulted.

The other penitentiaries copied these rules almost verbatim. The rules of the Onondaga penitentiary adopted on January 11th, 1855, contained an exact duplicate of the rules just quoted from Albany County. A later copy of the rules and regulations of this institution adopted December 31, 1880, shows no change except the omission of the parenthetical phrase permitting showering with cold water. At the latter date a further section is added requiring a record of punishments to be kept in a book prepared for the purpose and to be submitted to the Board of Inspectors at the monthly meetings. The rules and regulations of the Monroe County penitentiary adopted at the end of the same year as those of the Onondaga penitentiary also repeat verbatim the model set by Albany county with this difference

that it specifically provides that "showering with cold water is hereby prohibited." Within a single year, then, we see in at least one county penitentiary, the addition of showering with cold water, and in another its half-hearted acceptance.

COUNTY JAILS

In county jails there has been practically no punishment to speak of, although many of them do contain the necessary paraphernalia. Dungeons were reported in several of the jails as late as 1863. The application of shackles and gag was also reported in Columbia County in the same year. A few of them have had darkened cells. The use of ball and chain has been known from time to time even to this date (1915) but it is rather an exception and is generally applied by some extraordinarily incapable sheriff or jailer whose stupidity is greater than his fear of public opinion.

The inquiries of Wines and Dwight in 1866 did not show a very serious prevalence of cruel and unusual punishments but they did severely criticise the frequency and thoughtlessness with which punishment was carried out as an everyday matter, automatically following the infraction of a great many unnecessary rules. They showed that the silent system was provocative of perhaps more infractions and therefore of more punishment than any single factor in the institutional discipline of the day. They commented unfavorably on the lack of intelligence responsible for the failure to introduce a system of rewards that would take the place of, or supplement existing punishments. They expressed their doubts of repeated allegation of prison superintendents that no punishments had ever resulted in death or permanent injury. They criticised the rather general system by which subordinate officers were permitted to inflict punishment without reference to a higher authority.

HOUSE OF REFUGE

It fair to say, then, that despite numerous exceptions, the prevalence and nature of punishment in penal institutions had by the late "sixties" emerged from the state of barbarity under which, in the earlier period, whipping and other forms of corporal punishment were of frequent occurrence, and which officials did not attempt to conceal. The milder punishments provided in the rules of the House of Refuge continued throughout this period except that with the introduction of the mark and credit system the punishments theretofore existing were supplemented and some of them made less necessary. The fault with the credit system as a form of punishment in children's institutions, is, however, that one cannot expect the normal adult's power of inhibition from a child, and demerit marks, therefore, may be no more potent a deterrent than corporal punishment. Reward is the only really reliable means of controlling the demeanor of children. Corporal punishment was retained in the House of Refuge for the greater part of the century. In 1886 an investigation by the State Board of Charities showed the use of rattan and strap for corporal punishments. Caning of children was reported and straps of the kind used for paddling children were found on hallmen and night watchmen. The records of the institution at that time showed for the year ending October 15, 1879, a daily average of corporal punishments amounting to 32 with occasionally 75 as the day's record. The total for the year was given as 596 in the case of girls and 10,548 in the case of boys. The Board stated it as its opinion "that the punishments inflicted at the House were excessive in number and at times unnecessarily severe, if not cruel." Corporal punishment is not now administered in children's institutions with the approval of administrative heads. It is

practiced undoubtedly by individual officials on their own authority and *sub rosa*. Other punishments less subject to public detection and perhaps more cruel still obtain with a frequency dependent upon the personality of the superintendent. One form of punishment which has been practiced of late, especially in the House of Refuge, is the use of calisthenics. A boy assigned to the disciplinary officer may be required to go through more than a day's hard work in the form merely of setting-up exercises. The opinion of the medical officer is not regularly obtained when such punishment is assigned. In some of the children's institutions, especially those conducted on the cottage plan, minor offenses are dealt with in "family style," by the same methods used by parents: deprivation of a meal, being sent to bed, *etc.* For major offences children are more frequently assigned to a separate group or cottage and remain members of the disciplinary cottage for periods varying with their offence. They are, then, generally, except in aggravated cases, returned to their original groups.

WOMEN'S REFORMATORIES

For the private reformatories for women, there is only a meager record of the discipline employed. The nature of these institutions, which for a long time admitted inmates on the voluntary basis only, necessarily rendered the imposition of punishment, especially of corporal punishment, illogical. Having no power to hold them, they had no power to punish them. To maintain the discipline of the institution they had to resort to the expulsion of incorrigible members. The Magdalen Asylum had expelled¹ one hundred out of its two thousand first admissions. The

¹ Carson, *Private Reformatories*.

Home for Friendless Girls¹ is reported to have dismissed twenty in the year 1897.

The State reformatories started with full power to detain and to punish inmates in the same way as the institutions for men. The punishments reported early in the history of the institutions are dark cells with restricted diet and handcuffs.² It does not appear that the effect was very salutary, for in 1890, only two years later, the State Board of Charities reported at Hudson "liberty amounting to license." In 1895 a strong protest was entered by the Board against the use of the dark cell at Hudson. It was reported that women were sometimes kept in these cells for several weeks and for offences of trivial nature, such as breach of decorum, loud talking, leaving of ranks, and the like. In 1896 the State Board found an increase in number of cases under discipline. Later still and largely due to the habit developed by inmates of "smashing out" and screaming all night long, the management resorted to additional punishments, including the strap, cold douche, being cuffed to immovable objects and being locked in the attic or storehouse over night. Yet no improvement in discipline seems to have followed. The insidious association between lax discipline and severe punishment, and the deterioration of discipline consequent upon relaxation in the severity of punishments have made it impossible for the Board of Managers to see that they were going around in a circle and that the nature of their discipline was due in part at least to the severity and frequency of the punishment.

¹ Carson, *Private Reformatories*.

² State Board of Charities report 1888.

ALBION

The early history of the second State reformatory, (at Albion), shows an attempt in an entirely different direction. The managers and superintendent insisted that discipline was "largely a matter of fresh air, good food and cleanliness." In an investigation by the State Board in 1896 inmates separately interviewed expressed themselves in a satisfactory manner regarding their treatment. There was no dark cell, no guard house, and no place of punishment in the institution. Occasionally, it is reported, girls were confined in their rooms or placed on restricted diet. With the development and enlargement of the institution a more reactionary spirit made its appearance and a few dark cells were constructed in the reception cottage. In later years the situation became very similar to that of the other reformatories though not quite so bad.

BEDFORD

The Bedford Institution started with a serious disciplinary problem because of the existence of the prison building, generally referred to in recent years as Rebecca Hall. Here severe punishments were inflicted but the inmates under punishment could not be properly isolated from the rest of the population. In 1905 a separate disciplinary building was constructed containing ten cells and making possible the isolation of inmates, triple doors calculated to shut out all noise being attached to the cells. There is little record during this time of actual cases of severe punishment, the Boards of Managers usually making only general statements, and the State Board of Charities also contenting itself with generalizations.

An inspection of the Hudson reformatory in 1899 by the secretary of the Prison Association showed the existence there of a dark solitary cell, six by nine by twelve feet,

situated in a basement, and supplied with a ventilating shaft connected with the roof. In addition there were dungeon cells built of brick with solid iron plates to cover the windows. Corporal punishment by the use of the strap was recorded in three cases, in each case for "smashing out."

ELMIRA CORPORAL PUNISHMENT

The Elmira Reformatory included corporal punishment as part of its regular routine though inflicted only in rare cases, and then always under the personal supervision and generally by the hand of the superintendent. Much publicity was given to this form of punishment at the investigation of Mr. Brockway's administration which was followed by his resignation. So far as we know, this is the only institution where corporal punishment, at least under Mr. Brockway's regime, was probably never resorted to by any subordinate officer even *sub rosa*. It is the only institution where complete and accurate records were kept of corporal punishment and where it was undertaken not merely as a repressive automatic method of control, but on the theory that in certain special cases the application of physical pain or rather of a physical shock, as brought about by paddling, would have a distinct psychological value for the inmates so treated. There is still no consensus of opinion on this point. There are some authorities who maintain that it has definite value. But there *is* a consensus of opinion on the principle that corporal punishment as an acknowledged part of a regular system is entirely objectionable.

The form of punishment comprised in the loss of marks and grades in institutions where the marking system has obtained, like the House of Refuge, Albion Women's Reformatory, Elmira and Napanoch, belongs partly in the category of punishments and partly in the discussion of prison systems. It is not really a punishment in the same sense as those with which we are dealing in this chapter.

The recital of the history of prison punishments, especially those by solitary confinement and by the application of physical pain, may be briefly summarised for the one hundred-odd years of the prison history of our State as follows. Whipping as the simple and universal form of corporal punishment was naturally assumed to be within the rights and functions of prison authorities. This was partly due to the fact that whipping had, up to the time, existed as a separate form of punishment to be imposed by the court, and partly to the general recognition of corporal punishment as so integral a part of the pedagogical concept of punishment and of education as to render its application by the prison executive a "natural function." The introduction of the Auburn silence system brought with it an extension of the use of whipping as the only means deemed effective for the maintenance of the required silence. The frequency of the application of the cat meant that the presence of inspectors during punishment, originally required by law, had to be abandoned in principle as well as in practice. It meant therefore the elimination of any control and practically the granting of unlimited license to the institution head. The volume of necessary punishment further resulted in the delegation of authority by the institution head to his subordinates. Towards the "forties" therefore there had developed a state of affairs by which in most State prisons any officer could inflict corporal punishment upon a prisoner at pleasure. The use of solitary confinement during this period had a rather uneventful history. It was resorted to more or less regularly for the more serious cases where actual confinement was deemed essential. Almost invariably bread-and-water diet went with solitary confinement and the period of such confinement was practically unlimited, generally extending over weeks rather than days. The agitation during the "forties" brought the

matter of punishment clearly before the public and resulted, in 1847, in the abolition of whipping and the perpetuation of solitary confinement with reduced ration as the legally approved form of punishment. The law of 1847 provided, moreover, a special kind of solitary confinement which was made mandatory for the State prisons and which would have supplied, along with solitude and control, also the necessary hygienic conditions. It was the lack of these hygienic conditions that had made solitary confinement not only painful but actually dangerous to the life of inmates.

The penitentiaries established at this time based their methods of punishment upon the principle of the abolition of corporal punishment and the acceptance of solitary confinement.

But the change was too sudden and prison officers were incapable of accommodating themselves to it. Therefore new forms of punishment were devised. The buck, yoke, crucifix, shower, hooking up, tying up, *etc.*, were applied with varying frequency in different prisons and under different executives. During the three score and more years since the enactment of the prison law of 1847 there has been a gradual reduction of the frequency and severity of individual punishments but little real improvement in the spirit of institutional attitude towards punishment. The growth of the marking system, and the gradual, though very slow, recognition of the efficacy of rewards as against punishments, as well as a growing public sentiment against the infliction of cruel punishments, have, together, brought about a gradual improvement, not commensurable, however, with the time elapsed nor with the progress of social thought in general. Our standards of punishments are still behind our standards of general administration in prisons. At the present time there is, officially, no corporal punishment. In practice there is a good deal of it. Officially solitary con-

finement and bread and water diet only are permitted. The dark cell though not mentioned is generally used. The ball and chain are not rare. Several forms of punishment devised in different institutions occur from time to time as for example "standing on a crack" or ball and chain day and night, or wearing striped clothes in institutions where other inmates have gray clothing, and so on.

Cottage institutions generally have separate disciplinary groups to which inmates guilty of serious infraction of rules are assigned. In Bedford, two of the State prisons and on Rikers Island new "modern" solitary cells have been constructed, some of which can be made sound-proof, and all of which are above ground and fairly hygienic. On Rikers Island and in the State prisons each such cell has a small yard attached, for outdoor exercise of the prisoner, so that his detention there may be indefinite. The Bedford disciplinary building is poorly ventilated, badly heated, not supplied with water, and has no outside yard.

MODERN METHOD

The most modern and only valid form of punishment is really a substitute for punishment. The inferior type of prisoner, not capable of self-control and therefore frequently guilty of infraction of rules, is treated as a sick person. This method has been recently adopted at the Elmira Reformatory and is in an experimental stage at Bedford. In the former it is considered a perfect success, in the latter judgment must still be suspended. In general the disciplinary problem in female institutions is entirely different from that in male institutions. It is much more difficult and much farther from solution. A disproportionate representation of psychopaths among the female population of prisons and reformatories, the great prevalence of hysteria and other nervous disorders, the consciousness on the part

of inmates of their physical equality, if not superiority over their matrons, and the peculiar atmosphere that apparently develops in every women's institution, attributed largely to the absence of men, makes the women's problem a very much more serious one, to be judged therefore more charitably than the problem in men's institutions.

CRUELTY

When we have spoken of the form and frequency of punishments in institutions, from the standpoint of outright clear cases of punishment, we have not really covered the same ground as if we had approached the problem from the side of the inmate. He suffers not only from punishments known and approved at least by the prison administration, but also from the cruelty and, perhaps as frequently, the stupidity of individual prison executives or keepers. It is evident from a perusal of investigations during the last sixty or eighty years of prison history that the greatest amount of pain inflicted upon prisoners was not what is reported but that directly attributable to individual cruelty of employes. The investigation of the Prison Association beginning with 1844 uncovered a great number of such cruelties practiced during a long period of years. But occasional investigations have failed to stamp out the abuse. How many deaths, cripplings, incurable diseases, cases of insanity and vengeful indulgence in criminal career may be attributable to such unwarranted cruelty one can hardly imagine. The series of cases recited in annual reports of the Prison Association for a number of years after 1847 gives only a faint idea. Our own experience at this time with unrecorded yet known cruelties practiced in many of our prisons under our very eyes gives us a basis for judging the unspeakable conditions that must have existed years ago. The happiness and personal welfare of the prisoner and

often his life have counted for naught. The only relief for long years in this situation would seem to be the occasional good fortune of obtaining a kindly prison executive. Some of the histories of cruelty in prisons reported in the published statements of the Prison Association almost exceed belief. But it is of no profit to repeat them. Nor need we go back to 1847 for instances. Stories and complaints come in every day. It is almost impossible, because of the peculiar conditions in prisons and the fear of inmates to testify, to obtain convictions. One must therefore concentrate almost entirely upon efforts to obtain institutional executives amenable to the new idea in discipline and administration.

REWARDS

The use of rewards as disciplinary measure dates back to the early years of the House of Refuge. It has but a meager history, a struggling thin line of development. The early rules and regulations of the House of Refuge do not mention rewards by name but their use is implied in the description of the institution routine and of the purpose of the managers. By 1854 we find in the rules and regulations of the institution the following: "Chapter 15, section 1, Rewards and incentives. The superintendent will endeavor by such other privileges and discriminations as he can devise and allow . . . to encourage the child to moral effort in perseverance and good conduct . . . he shall study to occupy the place of parent toward the child . . . to win their confidence and affection . . ."

As a definite part of the system, acknowledged by the administration, we find no mention of rewards in any other institution at that time. They were advocated to some extent in the early reports of the Prison Association and gained in volume during the sixties and again during the present century. The subject occupied a good deal of the thought

and considerable space in recommendations in 1862, 1866 and 1867. The success of a system of rewards and of kindly discipline in other states was often cited, but apparently with little hope of acceptance in this state. Reference was often made especially to the work of Warden Haynes of the Massachusetts State Prison who was held up as a model. It is fair to say that the offering of rewards of various kinds for good behavior has practically never been adopted as an integral part of the daily routine of our prisons, with the exception, only, of commutation of sentence granted for the first time in 1817. In the reformatories the advantage represented by progress in grades may be considered as the acceptance of a system of rewards especially at the Elmira Reformatory, where successive grades represented tangible benefits; also in the Bedford Reformatory and to some extent in the other women's institutions where promotion from the reception building to cottages and some times to an honour cottage was held as a reward for good behavior. In children's institutions also certain privileges went with maintenance of a good record for a specified period of time. In all cases, however, these rewards have been secondary, supplementary. They have not constituted the main principle of discipline.

Self-government and the honour system partake of the nature of reward and constitute so important a part of the general system of the prisons in which they were introduced, that they should be properly discussed in another connection.

Discipline in its wider sense, that is, as a method of developing self-control and self-direction, has existed in two or three institutions only; one of which, Elmira, is the most important example and Bedford a weak second. The whole system underlying the Elmira Reformatory is based upon this interpretation of discipline and the contribution of that institution as a whole to the general field of penology con-

sists in its definition of discipline in these terms. But other institutions have been slow in taking advantage of this new idea. There is not enough of it in any of the other institutions to warrant discussion in this chapter. In the field of prison discipline development consists therefore of the following:

SUMMARY

A reduction and humanization of punishment, slow and reluctant, and still incomplete, scattered development of a new interpretation of discipline in single institutions with little effect upon the system as a whole; great variance between accepted maxims and practical application.

CHAPTER VIII

LABOR

WHILE punishments may be regarded as that aspect of prison life that has had greatest interest for the general public, "convict labor" must be conceded to have occupied the center of attention of those who had most influence over the administration of penal institutions. In fact the problem of the labor of prisoners has assumed such dimensions that it has risen above its institutional framework and has, under the term "prison labor," become an economico-political problem of considerable importance.

PRISONERS REQUIRED TO WORK FROM TIME OF EARLY PRISONS

The employment of prisoners antedates almost the very existence of prisons for convicted prisoners in this State. Even before the law of 1788 permitting the commitment of prisoners to county jails to be there put to hard labor, there had been growing a semi-penal institution midway in character between the almshouse and the bridewell. This institution, referred to as the workhouse in New York City, had been requiring compulsory labor from inmates committed to it since its establishment in 1734. The original almshouse or workhouse, as far as available records show, contained workrooms where inmates were assigned to various tasks, principally weaving and sewing. The work required there was, however, regarded more as payment for maintenance. The whole administration was based on the English poorhouse idea in which shelter was regarded as

charity and labor as a test and as payment for shelter and food. Perhaps there may have been some difficulty in persuading some of the inmates to do their share of work, and the law of 1788 may have been in part an effort to give legal sanction to the accepted maxim. By 1788, when the commitment of petty offenders to county jails was permitted by law, there had already developed a method of employment in the semi-penal workhouse. A minute of the common council of New York City in 1788¹ records a request by members of the board to those of its members who are also in the legislature to endeavor to obtain "such amendment to the law that vagrant and disorderly persons committed to the bridewell may be adjudged to hard labor as well without as within doors, as in the case of petty larceny offenders." A later minute on August 12, 1789, orders that "as many of the vagrants confined in the bride-well and sentenced to hard labor out of doors as shall be required" be employed in cleaning out the drain under the exchange market.²

The idea, then, was well established that prison inmates be required to work, but up to that time it applied to lesser offenders only. The law of 1796 created a new group of prison inmates consisting of felons who were to be confined for much longer periods and who, by imprisonment, had escaped either the death penalty or severe corporal punishment. That these should be required to labor seemed therefore even more natural than the similar requirement in the case of misdemeanants. In providing for the maintenance of prisoners in the new State prison the law of 1796 assumes their compulsory labor by providing that they shall be charged with the cost of their maintenance from moneys

¹ *Min. of C. C.*, vol. 1, p. 412, Oct. 22, 1788.

² *Ibid.*, p. 476.

credited to them "arising from any labor by him or her performed," and more explicitly, that the convicts "shall be kept as far as may be consistent with their sex, age, health and ability to hard labor." The organizers of the House of Refuge included labor among the first requirements from their wards, and actually put them to work immediately upon their commitment, at clearing grounds and domestic labor.

The Revision of 1828 assumed the labor of prisoners in the state prisons by providing for contracts to be entered into by agents of the prisons for that purpose. In the rules and regulations of the county penitentiaries, beginning with Albany in 1846, it was provided that "prisoners shall be required to labor diligently the whole time they shall be out of their cells." This was copied practically verbatim in the regulations of other county penitentiaries. The law of 1847 (section 103, later renumbered section 140) provided that all convicts in the State prison, other than those confined in solitude, "shall be kept constantly employed at hard labor during the day time, except when incapable of laboring by reason of sickness or bodily infirmity." Section 9, 10 and 11 of the article of the laws of 1847 relating to county jails required that prisoners under sentence in such county prisons shall be

constantly employed at hard labor, when practicable, during every day except Sunday, and it shall be the duty of the county judge or of the inspectors appointed by him to prescribe the kind of labor at which such prisoner shall be employed. . . . The keeper . . . shall have power, with the consent of the supervisors of the county . . . to cause such of the convicts under their charge as are capable of hard labor to be employed upon any of the public avenues, highways, streets or other works in the county in which such prisoners shall be confined or in any of the adjoining counties. . . .

In the Elmira Reformatory the prohibition of contract labor from the first implied the right to require labor. All this bears out the assumption that the very fact of imprisonment has *ipso facto* implied the right of the administration to require labor from prisoners.

VARIETY OF EMPLOYMENT

There is found a great variety of employment in prisons from the early period to the present. Weaving and similar labor were carried on in the early New York City workhouse. Inmates of the bridewell would seem under some of its keepers to have been employed at fishing in order to obtain provisions for the institution at low cost. Public work in the form of draining, and common labor at the building of fortifications¹ and on public highways² in New York City are reported for the latter part of the eighteenth and the early part of the nineteenth century. In the first state prison there was weaving, shoemaking, locksmithing, coopering, carpentering and nail making. In connection with the establishment of new State prisons at Auburn and Sing Sing there was construction work of every kind and, in Clinton Prison, mining; at the Sing Sing Prison quarrying and stone cutting. At the county penitentiaries, besides shoemaking and tailoring, there was chair caning, harness making, furniture making, demijohn manufacturing and farming. In the New York City workhouse there was cigar making and hoop-skirt manufacturing, and later in the state prisons an attempt at hat and silk manufacturing. Then, at different times and in different institutions,

¹ *Min. of C. C.*, vol. v, 1808, pp. 193 and 238.

² *Ibid.*, 1809, p. 739; June 5, 1809, ordered by the common council that it may be lawful for the keeper of the city prison "to employ the persons sentenced to confinement in the city prison at work on the public highways" under direction of the committee of roads. . . ."

foundry, forestry, knitting, bed making, weaving, quarrying, school furniture manufacturing, highway work, brick making, printing, bookbinding, *etc.* In various institutions there were broom, brush, tin, wheelwright, painting, and many other forms of indoor work.

KIND OF EMPLOYMENT DETERMINED BY MANAGING AUTHORITIES

The kind of employment in the different institutions has been generally determined by the managing authorities, whether a Common Council of New York City or a board of inspectors of State prisons, or boards of supervisors of counties, or boards of managers of reformatories or societies. Within certain limitations the managing authorities have had either implicit or explicit powers to provide labor for inmates of institutions at their discretion. Legislation from time to time either restricted or extended the powers of managing authorities. But in rare cases only and then almost exclusively in case of state prisons did the Legislature actually prescribe the exact nature of the labor to be performed. The kind of employment decided upon by the particular managing authorities has depended generally upon two considerations: one, the local needs of the institution or of the political division under which it was managed; the other, imitation of institutions already existing. If no disturbing factors were experienced these two considerations were final. Sometimes, however, the vicissitudes of other institutions had indirect effect beyond their own immediate walls. For example, much of the legislation meant for state prisons and brought about as a result of their difficulties has affected county penitentiaries and jails and has forced upon the managing authorities of these institutions, policies that they had not themselves contemplated.

The following brief narratives of the experience of penal

institutions with their labor problem may seem one-sided because of the comparatively great amount of attention given to state prisons. It is true that state prisons have on the whole a population generally less than half, often less than a third of the total prison population in the state; and on the basis of annual admissions they constitute an even smaller fraction. But their problems, especially in the matter of labor, have been more intensified because of the greater length of the average sentence of their inmates. Desirable as it surely is to employ all prisoners in jails, penitentiaries and the like, the necessity of employing them in the state prisons is incomparably greater. So far as the public is concerned, the prison labor problem has been largely a state prison problem and it is therefore reasonable that its history should deal at greater length with the state prisons.

There has been a great deal of confusion in the discussion of the prison labor problem. Much has been said about contract labor, the lease system, piece price system, state account and state use systems. They have often been discussed and compared and pitted against one another in respect to their advantages and disadvantages. A partial clarification was brought about in the course of discussions which culminated in Dr. E. Stagg Whitin's contribution on "penal servitude."¹ The various systems were reduced to the principles of classification pertaining to production and to distribution of prison products respectively. This classification is helpful in the discussion of the relative merits of the contract, lease, state use and other systems. But for the full appreciation of the prison labor problem as a whole it is necessary to consider it in respect to several other important points of view. Contract labor, for example, may have been an ex-

¹ *Penal Servitude*, by E. Stagg Whitin, published by the National Committee on Prison Labor in 1913.

ceedingly good thing at some time in respect to the finances of institutions but bad for discipline and for the inmates' health. Similarly, the piece-price system may have been advantageous to the contractor or business interests concerned, but unprofitable to the state, while helpful in the matter of discipline, and so on; each system has had its commendable features along with its weak points. It may therefore lead to a clearer understanding of the whole problem if we abandon the time-honored method of discussing prison labor along lines hitherto preferred, and endeavor an analysis in another direction.

FOUR ASPECTS OF PRISON LABOR

The history of prison labor shows four very distinct points of reference in relation to which the different systems have presented different characters, and each of which has been highly important in the development of prison labor. These are, in the order of their importance from the standpoint of prison administration:

First, the interests of the fiscal sponsor of the institution, namely the state, county, city or private organization. The conduct of an institution has always meant a considerable outlay for up-keep and extension. What has been the relation of prison labor to the financial and managerial problems of its fiscal sponsors; what methods of production or distribution have proved best from the standpoint of financial administration; what relation has prison labor had to other financial interests of the fiscal sponsor or management, such as public works of the state, city or county?

Second in order, though perhaps first in importance, is the relation of prison labor to the administration of the institution. This involves the questions of discipline, of maintenance, and of the general system of administration. What has been the experience with prison labor in its effect

upon the maintenance, discipline and administration of institutions?

Third. The prisoner's interests. What has labor meant to the prisoner himself in alleviating the hardships of his confinement; in enabling him to learn a trade or to earn something toward his own support upon discharge or the support of his family during or after his incarceration; what relation has labor had to his health or to possibilities of his exploitation?

Fourth. Business interests and free labor have been more or less deeply concerned, the former either as contractors connected with prisons and reaping benefits from the labor of their inmates, or as competitors of those who enjoyed such contracts; the latter in safeguarding its means of livelihood from what it conceived—sometimes correctly, but more often erroneously—to be a fatal menace in the form of convict labor.

A discussion of the problem under these four categories will serve another purpose, besides that of clarification. It will enable us better to judge the merits of the arguments of those who advocated or opposed one system or another of prison labor.

1. Interests of the Fiscal Sponsor or Management.¹

From the standpoint of the responsibilities of the community controlling a penal institution the following main considerations present themselves. First, the institution must be conducted and maintained regardless of cost. If necessary, the full expense is to be met by the community. Secondly, if possible, the institution is to be made self-

¹ For the data in this and the following chapter, especially relating to legislation on prison labor, the author is indebted to an unpublished study by Miss Sadie Engel, of the N. Y. School of Philanthropy, Department of Research.

supporting so as to cover at least the running expenses if not the interest on investment and the rate of depreciation. Thirdly, it is to be, if possible, a productive institution for profit making. Fourthly, it is to be utilized so far as may be, for the accomplishment of necessary public work. In this series of *desiderata* the managing authorities have had to contend with certain constant difficulties. First, that of finances pure and simple, that is obtaining the necessary funds through legislative appropriations or otherwise. Then the question of institutional discipline, of the relations to free labor, to the interests of the prisoner, and, finally, politics. The bulk of the history of prison labor concerns itself with the interests of the fiscal sponsors of the institutions, that is, the state, county, city or private association. In tracing, therefore, the vicissitudes experienced by managing authorities with their labor problem, we shall have covered the most important phases of the history of prison labor.

GENERAL FAILURE OF MANAGEMENT IN STATE PRISONS

In dealing with the management of penal institutions we must bear in mind the distinction between the responsible body itself, that is, the state, county, city or association and its managing representatives, namely inspectors, sheriffs, commissioners and managers. Frequently the absence of complete unity of interest between the responsible party and its representatives has in itself, in addition to other conflicting features, led to difficulties. Lack of ability, honesty or intelligence of managing authorities have contributed more than any other factors, to the failure to solve the prison labor problem.

As early as 1822 we find the integrity of some of the "inspectors" of the State Prison questioned.¹ The introduc-

¹ "Inside Out," *passim*.

tion of a clause in chapter 211 of the laws of 1818, provided that "the agent or inspectors of the state prisons at New York or the physician or surgeon or any officer or person employed in the prison shall not be concerned directly or indirectly in the contract, purchases or sales for, by, or on account of said prison" is an early indication of more widespread distrust. Often the management was not so much dishonest as unscrupulous in its relation to party politics. Perhaps the stern moralist will insist on calling that also dishonest. The change of management in 1847, by which the separate boards of inspectors for the individual state prisons were replaced by a single board of inspectors chosen at the general election, is attributable to the public recognition of abuses arising from incompetent and unscrupulous management. Governor Seymour, in his message of 1854, pointed to the difference between the honest, interested and capable management of institutions for relief and for the reformation of juvenile delinquents on the one hand, and the very different kind of management of penal institutions on the other hand. As a result of what must have been a scandalous situation caused by corrupt alliances between prison officials and contractors, chapter 240 of the laws of the same year provided that "no contract shall be entered into by the agent and warden of either state prison for the hire or labor of convicts or for the supplies for their support, or any purpose whatsoever unless the same shall have been approved by the majority of the inspectors present at such lettings. Copies of contracts are to be filed with the comptroller within thirty days of any contract." This law was further strengthened by an amendment a few years later.¹ The effect of supervision by the state comptroller has been very beneficial. In 1873 this official reports

¹ Chap. 399, Laws 1860.

as follows: "It has become a matter of public notoriety and is now generally conceded that the system under which our state prisons is conducted is a bad one, that the extravagance which marks their management is due in part to the bad system as well as to the careless and dishonest officials, and it cannot be expected or hoped that there will be any radical amendment until the system is changed. . . ." It was the growing appreciation of the failure of the prison inspectors to safeguard the interests of the State, that brought about the radical change in the entire system of prison management resulting in the creation in 1876 of the office of superintendent of state prisons. An immediate improvement in the finances of the institutions and a reduction in the deficit by almost fifty per cent. is shown for the six years following his appointment. In other types of institutions the difficulties arising from poor or dishonest management have been comparatively unimportant, and the lack of managerial ability has been less conspicuous; perhaps, because its effects have been less disastrous.

VARIETIES OF LABOR SYSTEMS IN N. Y. STATE

The general systems of prison labor introduced from time to time in our penal institutions have been the following: the public or state account system under which the institution acted as its own *entrepreneur*,¹ distributing agency, and, when necessary, sales agent; the various forms of contract system under which the institution acted more as a foreman or subordinate official while the contractor was practically the *entrepreneur*; the state use system under which the institution was again its own *entrepreneur*, but

¹ Entrepreneur is the term applied in economics to the planner and responsible manager of an industrial enterprise who represents the intelligence, activity and enterprise which render the capital invested productive. It is the connecting link between capital and profits.

with the market limited to that contained within the purchasing power of the State or its political subdivisions. The public account system was the first method of employment in any of our penal institutions and has maintained itself throughout these years even during the time when other systems were uppermost. The contract system under various forms extended from about 1817 until 1897, a period of eighty years. The state use system was begun about 1889 after the passage of the Fassett law and has maintained itself until the present.

“Public account” in the sense in which it is used here is a somewhat more comprehensive term than its use generally indicates. It is ordinarily applied to productive industries only, and implies the sale of the manufactured articles in the open market. The essential features of this plan are, that the work is entirely financed by the institution and that the products are disposed of in full competition with outside business and free labor. Public works and highway construction are here included in the same category, because from the standpoint of the institution as a public works business firm the essential features indicated apply to public works as well as to industries. In so far as such work would not be undertaken except for the availability of prison labor and represents, therefore, no substitute for outside labor, the terms “public account” and “state use” are perhaps interchangeable.

PUBLIC ACCOUNT SYSTEM IN EARLY N. Y. CITY INSTITUTIONS

The public account system more than any of the others applies to all types of institutions. It was the first, because the most natural. The labor at the old workhouse in New York City in the eighteenth century was on the public account plan. Articles manufactured were sold by the alms-house commissioner. The labor performed on fortifica-

tions and public works, highways and drainage were performed on the public account plan, and any work that has ever been undertaken in the county jails from the early days of their existence to the present has been carried out on the public account plan, as the term is here used. Even highway work, authorized as far back as 1809 in the City of New York and later for county jails by the laws of 1819 and 1828 may be regarded as work on the public account or public use system (this may be a convenient substitute for the term "state use," for it can be applied to institutions other than those conducted by the state). During the period prior to 1817 there was no other system practiced in this state. In the first state prison all the labor was performed with the inspectors and agent as managers and the state as the financial backer.

PUBLIC ACCOUNT 1796-1817

The law of 1796 provided "that it shall and may be lawful for the inspectors of each of the said prisons either by themselves or by an agent or agents to be by them from time to time appointed, to purchase such . . . tools, implements, raw or other materials on which to employ the convicts . . . and shall cause to be kept regular accounts of all the articles so to be purchased and of the avails arising on the sales of any articles manufactured by the convicts in such prisons . . . and . . . to carry the residue to the credit of the state." The inspectors accordingly proceeded to install several trades and to fit up the necessary shops, with the firm expectation that the prison would at least support itself, and with no fear of opposition from any quarter.

The first opposition appeared about 1801 and came from boot and shoemakers. It resulted in the amendment of the law,¹ requiring that boots and shoes made by convicts be

¹ Chap. 121, laws of 1801.

branded with the words "state prison." A further effort in the same direction, some three years later,¹ prohibited the employment of more than one-eighth of the convicts in the state prison in the making of boots and shoes, excluding from this number those who had learned their trade before commitment.

PUBLIC WORKS 1816-20

The change from the pure public-account system in the state prison came about as a result of unsatisfactory financial operations rather than because of opposition of this kind. The industries had been unprofitable, and there were no signs that the state prison would become self-supporting. Two directions of change were adopted: one was the assignment of prisoners to public works instead of industries, thereby saving the state moneys which would otherwise have had to be expended by the employment of free labor; the other consisted in the adoption of the piece-price plan,² under which, it was expected, prison labor would be more profitable. The former was inaugurated by a law passed in 1816, and extended in the laws of 1819 and 1820.³ In the first of these, the prison authorities were empowered to employ convicts "upon any of the public avenues, roads, streets or other works in the city of New York, and also on other public works in the counties of Richmond and Kings." The second law permitted the similar employment of inmates of penitentiaries and jails, and the third authorized "the purchase of marble quarries in Westchester County to be operated by convict labor from the New York prison."

¹ Chap. 89, laws of 1804.

² See definition in law quoted, *infra*; the contractor or business firm supplied the raw material which was converted into the finished product by the prisoners, at a definite rate per piece, for their labor.

³ Chap. 15, laws of 1816; chap. 83, laws of 1819; chap. 185, laws of 1820.

A further law, passed in 1817, had extended the provisions of the law of 1816 to permit the employment of prisoners on canals to be constructed under the canal commissioners of the state.

PIECE PRICE PLAN 1817

The adoption of the "piece-price" system was contained in chapter 269 of the laws of 1817 which prohibited "the purchase of any materials to be wrought or worked up for sale by the convicts confined in the state prison on account of the state after October 31, 1817," and directed that convicts were to be "solely employed in manufacturing and making up such material as may be brought to the state prison by or for individuals or convicts to whom such materials may belong, to be manufactured at fixed prices for labor bestowed upon them, to be paid by the owners of the goods to the agent of the said prison for the use of the state" a clear and unequivocal establishment of the piece-price system. There was little response, however, on the part of outside business to this opportunity, and so in the following year,¹ to avoid serious losses, the prison was permitted to continue the public account system in case there should not be sufficient work under the plan provided in the law of 1817. But the system presently picked up, and became fairly profitable, perhaps supplemented in part by contract labor,² which was authorized in 1821.³ At any rate, a commission appointed in 1824 to examine into the subjects of prisons and prison management, *etc.*⁴ reported

¹ Chap. 211, laws of 1818.

² Contract labor is the term applied to that system in which the labor of prisoners was given to outside firms or "contractors" at a daily rate per capita specified in the contract. The prison took no financial responsibilities but supplied the shops with heat, light and supervision.

³ Chap. 224, laws 1821.

⁴ Chap. 253, laws 1824.

that "the largest source of income is from the labor of convicts done for account of individuals, and on raw materials and articles brought into, and worked up in the prison workshops and charged to the employers or contractors by the piece." Governor Clinton in 1826 congratulated the legislature on the prosperity of the state prisons, which, especially at Auburn, were fast approaching the point of self-support. Financially, therefore, prison labor presumably with emphasis on the piece-price plan had thus far been profitable or at least had rendered the State Prison nearly self-supporting.

THE CONTRACT SYSTEM

Contract labor in the State prisons,¹ although authorized in 1821 in a special act, was not introduced as a permanent policy until the revised statutes of 1828 which entirely replaced the piece-price plan.² The law of 1828 included the following:

Whenever the inspectors of either prison shall so direct, it shall be the duty of the agent of such prison to make contracts from time to time for the labor of convicts confined therein, or of any of the said convicts with such persons and upon such terms as may be deemed by the said agent most beneficial to the State . . . *it shall be the duty of the agents to use their best efforts to defray all the expenses of the said prisons by the labor of the prisoners.*

PROSPERITY: 1830-1833

In 1830 the Auburn Prison employed 462 out of 620 convicts at contract labor, at a rate of approximately one-half of what would have been paid to free workmen.³ Despite

¹ The actual introduction of contract labor may have taken place first in the House of Refuge, where the system was adopted immediately after its establishment in 1824.

² Rev. Statutes, part 4, chap. 3, title 2, article 1, sec. 28.

³ Beaumont and Toqueville, *op. cit. passim.*

this low rate of pay the new system of employment by contract promised well. In 1830 Governor Throop reported with great satisfaction the prosperous conditions of the state prisons: "During the last three or four years the convicts have produced a surplus, after paying for the supplies and government of the prison, and it is fair to infer that hereafter the funds of the state will be relieved from that hitherto most oppressive burden." In 1833 a committee of the Assembly still reported prosperous conditions in the state prisons.

From the standpoint of financial management the early years of contract labor in the State prisons, like the early years of contract labor in the county penitentiaries later in the century, show complete success. But soon the attacks of free labor began to undermine confidence in the new system. Beginning with 1831 a series of attacks on the part of free labor became more and more insistent and the very prosperity of the prisons was used as an argument against them, in showing the extent to which they displaced free competition. In 1834 the first appreciable effect of the agitation by free labor upon prison labor legislation is recorded in the recommendation of a commission appointed by the Governor, that the labor of convicts be employed in "the manufacturing of products with which the country was chiefly supplied by importation." This recommendation was included in a law passed in the next year. It remained a dead letter until revived in a new law containing the same provisions in 1842. By the end of the "thirties" and from that time on to the constitutional amendment of 1894 entirely abolishing contract labor, the main cause for changes seems to have been not the requirements of an efficient and economic industrial organization but the propitiation of free labor with as little sacrifice as possible of state investment.¹ The state was therefore forced to pay less attention

¹ Cf. chapter ix.

to the financial aspects of prison labor and give more heed to the political and social questions involved. The provision in the law of 1842 (which reintroduced the manufacture of articles obtained by importation) directed the appointment of a commission to ascertain whether it would be practicable to carry on mining and smelting operations upon State lands, and if not, whether lands could be purchased for that purpose at a reasonable price, and whether convict labor could be profitably employed in such operations. Here we see an anxiety not so much to reduce State expense but to mollify public opinion and free labor which by petitions and other pressure forced the passage of a law some four years later¹ establishing a new State prison in Clinton County. The period from this time until 1894 shows a gradual decline of profitable prison labor under the contract system.

At two different periods during these years we find suggestions of the state use system² which eventually replaced contract labor. The first came in 1846³ providing that the Auburn and Mt. Pleasant Prison be credited for the value of clothing manufactured for the use of the State prison at Clinton. Another occasion appears in 1887 when the commission appointed by the Governor (by chapter 432 of the laws of 1886) recommended that the State manufacture "all supplies for the penal and charitable institutions of the State including the Soldiers and Sailors Home at Bath." Finally, two years later, the Fasset law definitely proposed the state use system.

¹ Chap. 245, laws 1844.

² In the "state use" system the institution is the fully responsible producer, taking the entire risk and receiving the entire profits, but the market for the sale of its products is limited to other institutions and departments owned or controlled by the state or its political subdivisions, and does not extend to the open market.

³ Chap. 324, laws 1846.

DECLINE OF FINANCIALLY PROFITABLE CONTRACT LABOR

Not only the attacks of free labor and of the business interests backing it, but also the gradual recognition that contract labor was on the whole financially disadvantageous to the State was responsible for its decline. There had been so much discussion of unfair competition with free labor, that the financial aspect was largely neglected. Clinton Prison had been a financial disappointment and was so reported by Governors Hunt and Seymour in 1852 and 1853. In 1866 the unprofitable nature of contract labor in all the State prisons was proved in the report of the special commission of the Prison Association. It is a peculiar fact that the decline of contract labor in the state prisons took place during about the time when the greatest prosperity of contract labor was reported in the county penitentiaries. The latter, established between 1846 and 1855, had attained the zenith of their financial success about the "sixties" and were recognized as the most successful institutions in that respect probably in the United States. This was especially true of the Albany County penitentiary. There, under the management of the foremost prison executive of the state, unhampered by political interference, his strong personality more than a match for scheming contractors, the system was developed to its highest point of efficiency with a minimum of disadvantages. While utterly condemning contract labor in the state prisons, the commission of 1866 recognized its success at the penitentiaries taking pains, however, to attribute it not to the inherent virtues of contract labor but to the exceptional ability of superintendents of county penitentiaries and to their freedom from interference by politics. The testimony before the commission of 1866 in this respect is exceedingly interesting and important.

CONTRACT LABOR UNPROFITABLE TO STATE—TESTIMONY
BEFORE COMMISSION OF 1866

“Can you mention any cases showing how the state suffers and the contractors profit by the present system of letting convict labor?”

Answer: “Yes. There was a contract given out in 1863 on which the men were let at forty cents per day. . . . A water-power worth \$1500 was given to the contractors at \$240. A yard and shop room which would rent outside for \$200 a year was thrown in without charge. This contract was to run as usual for five years. After the profits of two years had been realized and only three years remained of the contract, the original party sold it out for \$30,000. . . . They (the contractors) frequently claimed damages for pretended non-fulfillment of labor by convicts, which claims are often unfounded and which they themselves have reason to know are unfounded. They sometimes become debtors to the State for large amounts: which debts are settled by compromise far below the real amounts due.” (Testimony of Mr. Augsbury).

“Has the prison at Sing Sing ever been self-supporting?”

Answer. “In 1836 and 1837 under the administration of Robert Wiltse the labor of the convicts supported the prison and paid into the treasury of the State some \$15,000 to \$16,000 a year. At that time the prison was doing a great deal of work for the State house at Albany. . . . The prison paid its way also, and a little more, during two years of Mr. D. L. Seymour’s administration. It has never since, I believe, been really self-supporting.”

“Do contractors ever contrive to have able-bodied men placed on the invalid list in such manner that while the latter do full work, the former pay but half price for it?” Answer. “Instances of the kind have come to my knowledge.”

“Are there any other ways in which contractors contrive to get men to do full work on less than full pay?” Answer. “There are such devices. For instance, they will report a man as stupid and incapable of learning the business at which he

works; at the same time, there will be some place in which they can put him where he will do a full day's work. . . . Yet they will pay but half price for his labor.

"What amount of loss has been sustained by the State in consequence of these failures real or pretended?" Answer. "I cannot state definitely the amount, but I believe that the losses sustained by the State in the case of Sing Sing Prison during the last fifteen or twenty years would amount fully to \$200,000." (Testimony of Mr. Hubbell.)

In various other ways, too, the by-products of contract labor have been financially disadvantageous to the State. The following is an example quoted by the same commission: a contractor who was allowed the use of a valuable water power at Auburn without charge and who paid less for his labor than other contractors who furnished their own power, made claim to damages for losses alleged to have been incurred during a long series of years by reason of a deficiency of water. The exorbitant demand was allowed to the amount of \$125,000 which was "in fact paid by the state for the privilege of making a present to the contractor of the use of water power." Also, frequently bids of contractors were purposely made low by what was suspected as a combination among contractors. An instance is quoted by the commission of a contract let at Auburn on the day of their visit at the rate of 55c per diem per man. The next day the contractor boasted that each man was worth to him in fact \$3 a day.

PUBLIC ACCOUNT PLAN RE-ESTABLISHED

The commission unequivocally recommended the entire abolition of contract labor. Its report has certainly been an important factor in its eventual abolition. Perhaps the demonstration that it was unprofitable may have been the cause of the passage of a law in 1866¹ authorizing the

¹ Chap. 458, laws 1866.

prison authorities to employ convicts ". . . in such manner and in such branches of industry and at such kinds of labor as in their judgment would be most advantageous to the interests of the state . . . and to purchase and use all needed machinery and appliances for that purpose." This attempt at reestablishing the public account system marks the beginning of the process of piecemeal abrogation of contract labor. The renewal of the printing contract was prohibited by chapter 633 of the laws of 1867. The Governor's message in 1869 urged the discontinuance of the system because of its unprofitable nature, and in the following year repeated the recommendation on other grounds. The process continued for several years. An unsuccessful attempt on the part of labor interests in 1868 to abolish contract labor at once, was followed by the appointment of a commission for the examination of the whole question. This new commission, another of the innumerable ones, including among its members Dr. E. C. Wines, the general secretary of the Prison Association, reported in 1871. Its report contains further demonstration of the financially disastrous effect of contract labor. It shows among other things that the cost of the maintenance of prisoners under that system had in twenty-three years more than trebled. The conclusions of the commission contained the following important items:

1. The contract system of prison labor is bad, and should be abolished.
2. The industries of a prison, as well as its discipline, ought, ordinarily, to be managed by its head.
3. The successful management of the industries of a prison requires experience and business tact; qualities that can be acquired only by a long practical familiarity with such management.
4. It would not be wise to commit the industries of a prison to the management of its head so long as he is not only liable but sure to be displaced on every transfer of power from one political

party to another. 5. Considering the extent of the industries carried on in our state prisons, and the frequent changes of officers therein, the result of which is, that inexperienced persons are, for the most part, at their head, it would be unwise and unsafe to change the system of labor while the system of government remains what it is at present. 6. In order to effect a successful change of the labor system of our prisons from contracts to state management, it will be an essential condition precedent that political control be eliminated from the government of our state prisons, and that their administration be made permanent. 7. The only process by which this end can be attained is an amendment to the constitution; and to the attainment of that end the most strenuous efforts of all good citizens should be directed. 8. While the products of prison labor are not sufficient to sensibly affect the general markets of the country, there is no doubt that, in particular localities, these products do come into injurious competition with those of outside labor; and whenever such competition occurs, it is the result of the undue pursuit of one or but a few branches of labor in prisons, to the exclusion of all others; a result which points to the multiplication and equalization of trades in institutions of this class. 9. The opposition of the workingmen of the state is to the contract system alone, and not to industrial labor in prisons, and not only do the workingmen not oppose such labor, but they desire that criminals should be reformed as the results of their imprisonment; and further, they believe that this can be affected only through industrial labor in combination with other suitable agencies, and as the result of the acquisition of a trade as far as that may be possible, during their incarceration.

Contract labor was doomed, its financial failure as demonstrated again and again, and the occasional occurrence of enforced idleness like that in 1875 contributing to its downfall.¹ It was only a question of time when it would

¹ *P. A.*, 1875.

finally disappear. But it was almost two decades after the report of the commission, before legislation was passed abolishing it entirely; attempts to diminish its shortcomings by improving the general management and supervision of the fiscal and administrative affairs of the prisons provided only temporary postponements. The adoption of a constitutional amendment which in 1876 abolished the board of inspectors and substituted a superintendent for the entire state prison department was one such attempt. Pressure against the contract system as a whole, especially by free labor, continued, and with the additional arguments made available by the findings of the commissions of 1866 and 1870, the first fatal blow prohibiting contract labor was struck in 1883. In the next year the renewal of contracts was prohibited and another commission appointed¹ to study the problem as it then presented itself.

Failure to provide a substitute for the contract system brought the whole question of prison labor again squarely before the legislature, and in 1886 (by chapter 432), the reintroduction of the old piece-price system which had proved fairly profitable during the years 1817 to 1828 was decreed. The same law also appointed anew "The Prison Reform Commission." This body reporting in the following year, made the first reasonable and well considered set of constructive recommendations since the commission of 1834. The intervening commissions had been mostly destructive and had failed to recommend substitutes for the systems which they berated. This commission disapproved emphatically of the piece-price plan, regarding it as more oppressive than other forms of contract labor. They did not consider prison labor as a whole a really serious competitor of free labor, and recommended a comprehensive

¹ Chap. 21 and chap. 12, laws of 1884.

adoption of the state account system. They actually submitted a list of industries for adoption, including among them the manufacture of supplies needed for penal and charitable institutions of the state including the Soldiers' and Sailors' Home at Bath. This is the second approach to the state use system which finally triumphed in 1894.

LAW OF 1888 (YATES LAW)

About this time contracts that had been holding over from before the prohibition of contract labor in 1883 were nearing the period of their expiration, and on July 6, 1888, the superintendent of prisons reported to the Governor that within a month a thousand convicts in Sing Sing, 700 at Auburn, and almost the entire population at Clinton prison would be idle. Under pressure of this fact, Governor Hill called an extraordinary session of the legislature which met July 17th and passed a bill¹ ushering in the state use system. The bill was so imperfect, however, that the following legislature in 1889 felt it necessary to re-enact and improve it. As a result, chapter 382 of the laws of 1889, known as the Fassett law which is the foundation of the present prison-labor system of the state, was passed. The main provisions of that bill are the following:

1. Contract labor is prohibited.
2. The piece-price system is retained and supplemented by state account system.
3. State institutions are required to purchase their provisions from prisons unless exempted by the superintendent.
4. A numerical restriction equal to five per cent. of those in the state engaged in a particular industry, to be placed on the number of convicts employed in any one trade. Prices of piece-price products to be determined by a board consisting of the superintendent of prisons, the comptroller and the president of the State Board of Charities.

¹ Chap. 586, laws 1888.

5. The classification of convicts as to their criminal character and history, and their employment in such a way that the most hopeful would be rendered self-supporting while the incorrigible would contribute mostly to the support of the institutions.

6. A uniform rate of wages and fines to be established by the warden but no wages to prisoners to exceed ten per cent. of the total prison earnings.

This law is important not only because it constitutes the basis of the present state use system but because, for the first time, it endeavors in a single comprehensive law to eradicate all the evils of prison labor: it seeks to abolish or at least diminish competition with outside labor; it provides a market for prison products within the state institutions; it introduces a system of classification which takes account of the needs of inmates for trade instruction and harmonizes their needs with the requirements of the prison; and finally it makes provision, small though it is, for the payment of wages to the prisoner. Only minor changes of this law were made in the following years, mainly by extending the scope of public account work to highway labor.

CONSTITUTIONAL AMENDMENT OF 1894

The uncertainty of prison labor, as expressed in the constantly changing legislation which introduced and abolished systems at a kaleidoscopic rate, had by this time come to be felt so intensely, that at last the frequent recommendations for dealing with the subject through constitutional amendment were accepted, and in 1894 contract labor was forever abolished in the State of New York by constitutional amendment. Section 29 of article 3, provides that:

On and after the first day of January in the year one thousand eight hundred and ninety seven no person in such prison, peni-

tentiary, jail, or reformatory shall be required or allowed to work while sentenced thereto, at any trade, industry or occupation, wherein or whereby his work or the product or profit of his work shall be farmed out, contracted, given or sold to any person, firm, association, or corporation.

This was the destructive part of it. To render possible the employment of prisoners in other ways the same section includes the following:

The legislature shall by law provide for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails, and reformatories in the state . . . this section shall not be construed to prevent the legislature from providing that convicts may work for and that the products of their labor may be disposed of, to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof.

In the same year the constitution provided for the State Prison Commission, among the duties of which were the ascertaining and recommending of a system of employment for convicts in accordance with the new constitutional provisions. It was the work of the State Prison Commission in the following years, under the leadership of its president, Lispenard Stewart, that created the present form of the state use system.

THE STATE USE SYSTEM

There are four essential features of this system. First, that contract labor in all forms is wholly abolished. Secondly, that all labor of prisoners other than that necessary in the maintenance of institutions is devoted either to public works, including construction within the prison department, forestry, farming, highway labor, *etc.* or to the

manufacture of articles used by institutions or departments of the state or its political subdivisions. Thirdly, that none of the products of the prisons may be sold to any but the institutions of the state or of its political divisions; and fourthly, that such institutions or departments are required to purchase all articles manufactured in the prisons from those prisons, unless released from the obligation by certification from the state prison commission, that the article cannot be furnished. Thus the law provides a method of production which seems to interfere least with the interests of the community or of the inmates; it provides a market in which the prison products may be sold without interfering with the market prices of free labor, or with business interests producing the same materials; and it clinches the market for prison products by providing machinery for enforcing the requirement, that institutions shall purchase their commodities from penal institutions. The economic aspect of the arrangement therefore would depend upon whether the commodities may be produced with prison labor at reasonable cost; whether the market provided by institutions of the state and its political divisions is sufficient to absorb the prison products; and whether the system makes possible the development of such trades as afford the best opportunity for the training and rehabilitation of the prisoners. The state use system has been in force now for some twenty years and the answer to these questions may be briefly summed up as follows:

Prison labor may be utilized for the production of any commodities at reasonable cost and with a fair margin both for profit and for the payment of wages to prisoners if the management of the industries is in competent hands. Numerous investigations and examinations in the last two decades have shown, however, that the management of the prison industries has at no time been well organized or had

a chance for the permanency necessary to effect an efficient system of production. Prison labor, at best, is untrained and contains a considerable percentage of fundamentally (psychologically) incompetent persons. It takes therefore more than the application of average intelligence to utilize their labor to advantage. No such intelligence has, however, been applied.

The market supplied by institutions and departments of the state, counties, cities, and townships has never been thoroughly canvassed or exhausted. While such an estimate of the extent of the market, as that made by the prison commission in 1910, which placed the money value of the market at twenty million dollars as against the one million dollars actually produced, is exaggerated, there nevertheless is sufficient, even at a conservative estimate, to employ all available prison labor, if account is taken of the need for the training and education of the unskilled and uneducated prison inmates.¹

That the work would be so organized as to afford the best opportunities for the training and rehabilitation of prisoners was assumed in the retention of the classification first introduced in the Fassett law. But that, too, had become a dead letter because of the same administrative indifference that has been responsible for the failure to organize the prison industries for efficient production and sales.

HOUSE OF REFUGE

Contract labor was introduced in the House of Refuge at the same time or somewhat earlier than in the State prisons. But the House of Refuge was fortunate enough to have a disinterested group of persons in charge. The board of managers, a self-perpetuating body without

¹ The studies of the "Industries and Employment Association" in 1915 arrived at this unequivocal conclusion. (P. A., 1915.)

financial interests in the institution, and composed mainly or exclusively of persons with primarily philanthropic interests was able to adopt a permanent system of labor not dependent upon the change of political fortunes. We find therefore little of the experience of the state prisons with the evils attendant upon contract labor. Seven to eight hours labor were required of almost all children: a somewhat smaller amount from the younger than from the older. Strict rules were laid down for the conduct of workmen or instructors that came in contact with the children. The task system was adopted, but, unlike the state prisons, completion of the task was followed not by overwork but by recreation; children earned their recreation by speedy performance of their tasks. But the backwash of the prison labor agitation eventually flooded out the contract labor from the House of Refuge and the other children's institutions as well. Several bills were introduced in the "eighties" to abolish contract labor at the House of Refuge. The institution consistently opposed these bills, showing that the system had worked satisfactorily from the opening of the institution, and that a large part of the income of the house had been obtained in that way. The bills introduced in 1884, which seemed at first likely to pass, were defeated. But eventually the constitutional amendment put an end to contract labor there as well.

COUNTY PENITENTIARIES

To no group of institutions was the abolition of contract labor so great a blow as to the county penitentiaries. These prisons had become self-supporting under the contract labor system, and during most of the period actually earned a surplus. Politics and other corruptions were kept out of their administration. From the standpoint of the fiscal interest of the counties they were therefore a perfect success.

But the interests of free labor and the desirable training of prisoners were neglected and the prisoners were to some extent exploited. We have referred occasionally to the critical testimony in this respect. It was felt by many, that the financial prosperity of the penitentiaries was purchased at too high a price in the way of unduly hard labor on the part of inmates. Since the abolition of contract labor the penitentiaries, unlike the state prisons, have been unable in most cases to find a substitute. The Onondaga County penitentiary has developed its quarry and road work to a satisfactory extent but the others have kept their inmates idle and have sagged until they have ceased to be "penal institutions." They are almost a complete financial dead-weight upon the counties.

REFORMATORIES

In the Elmira reformatory, the women's reformatories and county jails, there was never an attempt to introduce an industrial system for the self-support of the institution. In Elmira, contract labor was prohibited from the first. The piece-price plan was introduced and was practiced for a short period. But within ten years of its establishment the law of 1883 was passed abolishing contract labor; and instead of alternating between various systems or permitting inmates to go idle, educational activities, military training and trade instruction were introduced. These soon entirely displaced productive labor at the reformatory except for a small remnant in soap manufacture and book-binding. In women's reformatories and county jails there is practically no history of labor to be told from the stand-point of any contribution towards the maintenance of the institution. The county jails have simply been idle, with a few exceptions here and there, while the women's reformatories have done little more than domestic labor for main-

tenance and training for domestic service. The New York City institutions have had a varied history in which productive labor did not occupy as important a place as in the other prisons. There was always a sufficient amount of quasi-public work to be performed for the various departments of the city so that those of the prisoners who were confined long enough, could mostly be put to work. At no time did the question of their maintenance and of the desirability to make them self-supporting assume sufficiently important dimensions to arouse public interest of the same magnitude as that concerning the state prisons or county penitentiaries.

In the private reformatories for women, we find a fairly long history of efforts to make the institutions self-supporting. The training and moral effect of steady application were uppermost in the minds of the management. But, throughout, we find a great anxiety to employ the women at profitable trades. The very desire to make employment profitable may have had a moral aspect. At least it would seem so, from the way it is reported upon. The first employment of inmates of private reformatories for women at commercialized industry appears to have been begun before 1850 in the Magdalen Asylum. It consisted of sewing and laundry work. Both these trades have maintained themselves to this day. From the first there was little success, the income hardly aggregating enough to affect materially the maintenance of the institutions.¹ In very few cases does there seem to have been at all a reasonable commercial success. The Home for the Friendless began an ambitious attempt towards profitable employment of its inmates in 1870 but failed to make it pay. Laundry work has generally proved a better investment and was therefore more generally developed and more relied upon. The

¹ Carson, *passim*.

Magdalen Asylum (now Inwood House) has largely depended on it since 1875, and has only discontinued it in the last few years. The House of Mercy and the House of the Good Shepherd in New York City had a very similar experience. Probably the entire proceeds of all the commercialized industries in private reformatories, together, have hardly been sufficient to justify the amount of criticism on the part of the public and the loss of opportunity for more reasonable training of the inmates.

CHAPTER IX

LABOR, CONTINUED

2. PRISON LABOR AND INSTITUTIONAL ADMINISTRATION

WHAT are the principal problems of a prison executive in respect to the labor of his inmates? First, he has to house, clothe and feed them. For that purpose he must have a certain number to do the cooking, heating, distribution of food, distribution of clothing, laundering, scrubbing, washing, *etc.* Secondly, he would be expected to do all this with the least possible cost to the State or other organization to which he is responsible. Thirdly, he has to keep his prisoners busy unless he assigns them to solitary confinement. Fourth, assuming that he does employ them, he must be prepared to maintain discipline, prevent escapes, riots, or destruction of property.

How have the various systems of labor aided or hindered him in the pursuit of his purposes? There are few reliable data available on this point prior to the early years of the nineteenth century in connection with the first New York State Prison. There are indications here and there that there had never been any question of the propriety of employing prisoners for the maintenance of institutions, and there is no record of any disciplinary difficulties arising out of the assignment of inmates to employments required for that purpose. There has always been a sufficient proportion of prison inmates with experience in doing the most menial kind of labor. In only one type of institution has

outside paid labor been employed for maintenance work, namely, in the houses of detention, either for civil prisoners as in New York, Kings and Queens counties, or for court prisoners as in Erie and Monroe counties. The first problem, then, of the prison administrator has apparently been settled universally without difficulty.

With labor cost eliminated, the economic administration of the institutions becomes dependent on managerial skill of the executive, and resolves itself into a question of skilful purchases and prevention of waste.

In most institutions there has regularly been a far greater number of prisoners than required for maintenance work alone. The size of the labor problem of any institution has been determined, therefore, by the excess number of prisoners. In the Newgate prison there were organized simultaneously with the opening of the institution a number of trades, including weaving, shoe making, locksmithing, nail making and carpentering. In the House of Refuge shoe making and tailoring were organized within the first year of its institutional existence for the employment of these not needed in the cleaning-up of the grounds and in ordinary domestic labor. The establishment of the Auburn and Sing Sing prisons provided sufficient employment in the form of building construction. The county penitentiaries opened with shops, ready for operation immediately after the necessary construction work had been completed. Women's institutions were started on such a small scale, with little more than the necessary inmates for upkeep work, that no labor problem presented itself at first. For a long time almost the only type of institution that had no employment whatsoever for the excess population (over those employed for domestic purposes) was the county jail (including the city prison of New York). The population of county jails was in most cases too small to justify the organ-

ization of a regular trade or even continued employment on public works. There was, therefore, little utilization of the legislative provision authorizing keepers of county jails, with the consent of boards of supervisors, to employ prisoners on public highways or streets in their own or adjoining countries.¹

In jails or detention prisons, court prisoners have generally been in the majority, and their presence, free from the compulsion of work, has been enough to discourage any attempts to find employment for the other inmates, who were serving terms. The agent of the Boston Discipline Society who visited some fifteen of the county jails in this state in 1839, and committees of the Prison Association who began inspecting jails and other prisons in 1844 found unemployment among prisoners in practically all the jails and in the city prisons of New York. Only one instance was recorded of any employment in the New York city prisons, namely in 1847, at picking oakum. This practice was commended at the time (1847) and its extension advised.² Later in the century county jails were reported from time to time to have undertaken some piece of work with their excess populations. Scattered instances occurred especially during and after the sixties, but still at such rare intervals as hardly to affect the situation in general. The State prisons and penitentiaries were able to employ the greater part, and often the entire available population, from the date of their organization until the seventies and eighties, when the agitation against contract labor assumed its greatest dimensions. The agitation, even before it had attained success, tended to throw out of gear the industrial

¹ R. S. 1828, part 4, chap. 3, title i, art. 1, sec. 14. Also previously, ch. 83, L. 1819.

² *P. A.*, 1847-8, p. 164. Keeper Wm. Edmunds responsible for the innovation.

system in those prisons. Probably the worst period in respect to the employment of prisoners followed the series of laws beginning with 1883 and extending to this time. The law of 1883 prohibited contract labor without substituting for it another workable system. Various laws passed from time to time after 1883 attempted to improve the situation by providing some specific field or method of employment, but all this patchwork was ended by the constitutional amendment of 1894, which prohibited all forms of contract labor for the open market and restricted the employment of prisoners to articles required in the institutions owned by the state or any political subdivision thereof. Since that date there has been more idleness in state prisons and county penitentiaries than was known throughout the whole previous history of prison labor. At the present, probably not more than one third or one half of the State prison population is employed at a reasonable rate of intensity and a considerable proportion in at least three of the county penitentiaries is practically unemployed throughout the day. The productive work in the institutions of New York City is of small volume, and at the reformatories the maintenance labor required is supplemented by formal trade training.

The impression exists that, because the abolition of contract labor has on the whole reduced the amount of employment available to prisoners, therefore the period during which contract labor prevailed represented a full day's work for each available inmate. Such, however, was not the case. There were many instances where contractors could not be found for all the prisoners, and while some groups were overworked by the speed and pressure exerted by contractors, other groups in the same institution were completely idle. Occasionally, especially in years following financial crises, we find some of the county penitentiaries reporting great difficulty in obtaining any bids for contracts.

From the standpoint of the imperative necessity of keeping prisoners at work, that system of labor would have to be considered the most successful under which plenty of labor was available for all, but without excessive pressure. It would mean a system, moreover, independent of fluctuations. It would have to provide employment all the year round and should be free from the necessity of employing a large number of expert instructors. It should not require a long period of training on the part of the prisoner so that he might soon after his admission become a valuable worker. Fluctuations in the supply of employment in prisons have come from two different sources—those in the industrial and financial world, which determined the market and the prices of commodities manufactured and those depending upon the season of the year. The former have taken place from time to time in industries such as furniture, shoe making, hat making *etc.*, the latter have been characteristic of public work, such as road making, farming, quarrying, and the like. The history of prisons shows serious disturbances arising from both sources. Even under the contract system, there were frequent periods of idleness. On the whole, however, contract labor and other similar forms, including the piece-price system, have been fairly well able to supply the necessary amount of labor. By comparison, the state use system in vogue since 1897 has been a failure. A great amount of idleness is found in our prisons today in shops which are apparently running. On the other hand the contract labor system has more frequently imposed upon inmates excessive amounts of labor carrying with it all its evils of overwork, affecting both inmates and administration. Outdoor work has suffered from fluctuations almost as serious. Road work cannot be carried on for more than seven months of the year at most. The heavy part of farm work covers hardly more than two or three months of the year.

Quarrying may be carried on for all but three or four months. In the state prisons where industries have been conducted under either the state use system or under some other system, it has been possible to supplement the work of those engaged on out-door tasks during the open season by indoor employment in the winter. But in the penitentiaries, with the possible exception of the Onandaga county penitentiary, the situation during the winter months has been deplorable. Added to the natural fluctuation in the available work there is the fact that institutions containing lesser offenders have always a higher census during the fall and winter months than during the spring and summer; a great many vagrants manage to be "put up for the winter" in jails or penitentiaries and strike out again in the spring for the open fields and woods. For jails, especially, this accumulation of prisoners during the closed season has been disastrous in accentuating all the evils of jail life. Were the prison administration to choose now *on the basis merely of keeping inmates busy*, very likely contract labor would be the system preferred.

LABOR RELATED TO DISCIPLINE

But the fourth task of the executive, that of conducting prison labor in such a way as to prevent disciplinary infractions, riots, escapes and the like, would change the balance of preference. The comparative advantages, from this standpoint, of employment by the institution directly or on a contract basis are briefly told. Whatever discipline the prison executive is capable of, he can exert at will when he is in charge of all activities of the institution. But when the employment of the prisoners, which, after all, constitutes by far the greater part of the daily routine, is under other management than his own, the possibilities of maintaining good discipline are seriously endangered. Testimony re-

garding contract labor from this standpoint is practically unanimous. Disruption of discipline under that system has taken place in a number of different ways: corruption of prison officials from the warden down, attempts at obtaining appointments and dismissals of prison officials to serve the contractors' purposes, bribing of prisoners, manipulating of hours and conditions of labor have been frequent. Individual contractors and their underlings, such as foremen and instructors, invented corrupting methods of their own: by enabling prisoners to earn more money, such foremen were able to sell them contraband material, which they much coveted, at exorbitant rates. As incidental effects of some of the evils of contract labor we find an increase of insanity. Occasionally, under pressure of demands of contractors, prisoners would commit suicide or intentionally maim themselves or make foolhardy attempts to escape. Some of the testimony before the special commission of 1866, elsewhere referred to, brought out with striking clarity these evils of the contract system:

. . . Do the contractors in our state prisons exert this baneful power over both officers and inspectors? Such we are pained to say is the testimony of the witnesses. . . . They go so far as to say that in their opinion if the contractors would combine, they could at almost any time induce the inspectors to remove a warden, who for any reason was obnoxious to the contract party. . . .¹ The principal keeper at Clinton prison, Mr. Wallis, says briefly that the contractors interfere with discipline by causing keepers to be dismissed and others to be appointed in their place. . . . The system admits all contractors who are politicians exerting a great influence over inspectors who are likewise politicians and members of the same party, at whose election they have aided. . . . Contractors are often politicians

¹ *P. A.*, 1866, pp. 329-331.

and hence have power to control removals and appointments. . . . By means of these persons (laborers and contractors brought in by contractors) convicts are kept in a continual state of excitement or of hostility to the prison authorities and to the influences necessary to their due subordination. . . . More than all this they not infrequently interfere directly with the discipline, thus subverting the control and influence of the warden. They do not only insist in some cases that the convict shall be punished but in other instances endeavor to screen him from the punishment which the interests of the institution demand that he shall receive. They even lay plans to entrap the prisoners so that acts may be done by which punishment may be sustained. . . . The contractors introduce into the prison a class of persons who are unfit to associate with the prisoners and who greatly abuse the facilities there accorded for intercourse with convicts. These persons are of two classes, laborers and instructors of the convicts. . . . They introduce surreptitiously into the prison forbidden wares, such as articles of food or spirits. They bring these in large quantities under the guise of the materials to be used by the contractors and then sell them to the prisoners at enormous profits of one to two hundred per cent. They also furnish the convicts at exorbitant rates the means of carrying on clandestine correspondence by letters to their friends, at the same time robbing the "mail" which has thus been entrusted to them. The utmost difficulty is found in detecting this villainy because the word of a convict cannot be taken, and because when complained of they assume and maintain with skilful and surpassing impudence the air of injured virtue.

The following is some of the most striking testimony given before the commission:

" Instances have been reported to me in which the contractors' clerk or foreman has given the prisoners small tasks in order that they might do a large amount of overwork; the proceeds of which would be largely spent in contraband articles, much to the profit of such clerk or foreman."

"What proportion of the convicts on contracts finish their tasks before the hour arises for closing the shops?" Answer: "I should think ninety *per cent.*"

"What kind of (contraband) articles are so introduced?" Answer: "Sugar, tea, coffee, butter, pies, cakes, liquor, looking glasses, combs, brushes, *etc.* These sometimes come in by the barrelful under the guise of materials to be used by contractors."

"How are these articles disposed of?" Answer: "They are sold to prisoners sometimes for money but chiefly for overwork at prices double and many times treble and quadruple their market value."

"Do escapes ever occur . . . through the interference or carelessness of contractors or their agents?" Answer: "This I believe to be the case in many instances."

"Are escapes ever effected by convicts so employed? (on the Sabbath, cleaning boilers and making repairs) ". . . Answer: "Prisoners sometimes do make their escape by being so employed and as I judge in consequence of it." (Testimony of Mr. Hubbell, ex-warden of Sing Sing).

"Does the contract system through overwork facilitate escapes?" Answer: "It does for the reason that the convict escaping has money to procure subsistence and this in direct opposition to the rules of the prison." (Testimony of Mr. Augsbury).

Other more intangible interference with the general discipline of the institution occurred of a character represented by the following testimony by Rev. Dr. Luckey.

I myself was eye witness to what I am about to relate. A certain contract had expired where some fifty men were released from productive labor. These men were brought into the prison yard and made to stand up in a row with their backs against the wall of the main prison. The several gentlemen then holding contracts were summoned and asked on what terms they were willing, temporarily to take the labor of these convicts. Thus invited they passed up and down the line,

examining the men, one by one, closely scrutinizing their persons, and at the same time indulging in jocular and sometimes coarse remarks thereupon. The warden at length said "Well, gentlemen what will you give for the labor of the whole lot together?" A contractor responded, "I will give twenty cents a day." A second advanced slightly on that offer. The bidding then went on as at an ordinary auction sale and until no higher per-diem could be obtained, when the men were let—struck down I might say—to the highest bidder. The scene in all its main features answered to that I had conceived of a slave auction at the South in the days when men and women were sold there." . . . "Under whose administration did this occur?" Answer: "To the best of my recollection it was under the administration of Mr. Beardsley."

It is hardly necessary to adduce any further testimony in support of the assertion that from the standpoint of institutional discipline contract labor was highly dangerous. On that ground it has been condemned beyond redemption.

The constitutional amendment of 1894 abolishing all contract labor, and introducing the state-use and public-works system was adopted by a large majority of the voters but did not meet with the entire approval of some of those most earnestly interested in the prisoners, including the Prison Association. They felt that nothing could be worse than a sudden introduction of general idleness. Intense activity was put forth on their part to cause a repeal of the amendment, and the reenactment of the Fassett law. They proposed a substitute for the new section 29 of the constitution. In their report attacking the amendment they assumed that the result would be the total demoralization of the prisoners by idleness. In a memorial to the legislature they said:

You must answer first for the demoralizing idleness of our penal institutions on nearly seven thousand prisoners and for

their return to society helpless and hopeless, unaccustomed to labor, untrained in industry and a menace to all honest people. Second, you must answer to the people for depriving the insane asylums of the state of their right to support themselves so far as they can do so by their own labor. . . . Fifth, you must answer to the taxpayers of the state for greatly increasing the volume of taxation. Sixth, you must answer to the working man of the state for bringing home within the confines of our own commonwealth the entire competition which can possibly be made to exist through the labor of our penal establishment.¹

To the Prison Association the Fassett Law seemed at the time the most promising solution. They feared that the absolute prohibition contained in the constitution would render any emergency legislation that might be necessary to remedy the threatening approach of complete idleness impossible. They feared the rigidity of constitutional remedies.

The Prison Commission which was created by a constitutional amendment in the same year, and which was established by the legislature in the following year, assumed a different and favorable attitude to the principle included in the constitutional amendment and to the method provided for its execution. They set about to make the best of the prison system with that amendment as a guide, and the Fassett Law as a basis. In legislation prepared by the Prison Commission to carry out the purposes of the constitution, they retained many features of the Fassett law, including the gradation of prisoners. The law prepared by the Commission included the following principal features:²

1. Contract labor abolished. State use system adopted.

¹ *P. A.*, 1895, p. 58.

² Chap. 429, laws 1896.

Prison products to be used by the state and political subdivisions.

2. Labor of state prisons and reformatories to be applied to institutions of the state first and then to other institutions and departments. The labor of county penitentiaries to be employed for the counties first and then to the state and other institutions.
3. Prisoners graded as per Fassett Law.
4. Purchases by institutions and departments from sources other than penal institutions to take place only after certification by the Prison Commission of the inability of prisons to provide the desired commodities.
5. The superintendent of prisons, controller, prison commission and lunacy commission to constitute a body for fixing of prices.
6. Compensation of prisoners not to exceed ten per cent. of the total earnings.

The opposition by the Prison Association did not disappear for some time and was only withdrawn gradually as the new system proved its comparative success in avoiding the evils of contract labor, without introducing complete idleness. The Prison Commission continued to carry out its duties intelligently and effectively. Various industries were assigned to the different prisons and estimates were received from institutions and departments, of their needs. These estimates served as a guide for the creation and distribution of industries. The board for fixing prices was reorganized under the name of Board of Classification by chapter 623 of the laws of 1897, and has continued that function ever since. There was comparatively little trouble encountered in the introduction and extension of the new system, and in 1898 the Prison Commission felt justified in saying that "the people may be congratulated upon the success of the new system of employment of prisoners."

Inquiries directed by Secretary Round of the Prison Association to wardens of the various prisons in 1898, inquiring as to the effect of the new law, brought back answers which on the whole were favorable, although little time had elapsed since its introduction.

One conclusion perhaps we may safely accept as the result of the long history of prison labor in this State. It is, that no single system has as yet been found that is profitable from the standpoint of the management, satisfactory to the administrator, and, at the same time, reasonable with regard to the interests of the prisoner and the interests of free labor and business. We may as well abandon, then, any thought of making a prison even self-supporting, to say nothing of making it profitable, if we are to give due heed to the paramount necessity of rehabilitating the prisoner upon his discharge as a competent member of his economic and social environment, if we want to keep him in good health and improve his physical condition, and if, finally, we want to utilize the labor of prisoners for carrying out necessary public improvements. We should rather assume what has, in fact, been assumed in connection with children's and women's institutions, that prisons are an educational investment and that they are to be conducted as such. The cost of their maintenance should be regarded in the same light as expenditure for schools and for the support and subsidy of universities. When we have successfully eliminated from our conscious or unconscious requirement of a prison that it be financially profitable we may approach the whole question of prison labor with a clearer mind and simpler purpose.

3. PRISON LABOR AND THE PRISONER

That the welfare of the prisoner is the primary consideration in any labor system, has been tacitly assumed through-

out the history of prison labor. Often it was bombastically expounded. But a close scrutiny of that history will show that not until the latter part of the nineteenth century did this assumed basis really become an honest and purposeful guide rather than a neglected truism. The House of Refuge is perhaps the only exception to this generalization. There, from the very first, the welfare of the children was really uppermost. The labor system, the hours of employment, the trades chosen, the kind of supervision and instruction provided, were all based on an honest effort to carry out in practice what was accepted in theory. It is true that lapses have occasionally occurred. We find that time and again the institution was severely, and sometimes justly, criticised for allowing its desire for material gain to affect the prime interests of the child. But, on the whole, in children's institutions, the interests of the inmates have remained the most important conscious factor in their employment. This viewpoint was emphasized and extended to other institutions by the organization of the Elmira reformatory and the incomparable work of its first superintendent. For the first time, perhaps, the organization of an institution's labor system in a prison for adults was truly based upon the requirements of its inmates, when the Elmira reformatory was created and developed. Speaking of the year 1854 when he was connected with the county penitentiaries of the state, Mr. Brockway in his memoirs denies that the idea of organizing prison labor on that basis had as yet broken into the consciousness of prison administrators. We may therefore dismiss as pure lip-service most of the allegations of prison managers and administrators in the early part of our prison history to the effect that the prisoner's interests were the basis of the labor system.

In analyzing the interests of the prison inmate as they are related to the labor system of the institution, we find there

are four rather distinct directions in which he is concerned. First, labor acts as an alleviation of the ordinary miseries and moral dangers of prison life. This aspect becomes more evident when the employment of prisoners is endangered and the spectre of idleness appears. It is then that the fundamental necessity of labor as an indispensable physical and moral influence is recognized. In the refutation of the arguments of free labor for the discontinuance of prison industries those prime needs of the prisoner for physical and moral reclamation through labor are constantly emphasized. It was this aspect that aided in obtaining emergency legislation in 1888 from the special session of the legislature convoked for that purpose by the Governor. It had become clear, that without some immediate action, several thousand prisoners would be condemned to the unspeakable misery and the certainty of demoralization that would ensue upon the discontinuance of labor. It is this that makes the situation in the county penitentiaries of our state today so deplorable. For imprisonment without labor, though it be not as destructive physically as solitary confinement, is certainly more active in disintegrating the initiative and moral fibre of the prisoner. There is of course a converse side to this, namely, that of the exploitation of the prisoner through excessive labor, referred to before.

The second aspect of the prisoner's interests, as involved in prison labor, is the maintenance and improvement of his health; the third is the economic rehabilitation both of himself and of his family; and lastly the contribution of institutional labor towards his industrial training. This latter assumes especially serious dimensions when we bear in mind that not less than seventy *per cent*, of the population of prisons consists of untrained and unskilled laborers, who, even if entirely normal, and placed in reasonable environ-

ment, would still have a hard struggle to compete favorably with their fellowmen. But without a skilled trade the least untoward factor in his environment becomes dangerous and may lead him in the direction of prisons.

GENERAL ALLEVIATION THROUGH LABOR

Early in the history of our prisons it was accepted that labor was necessary in order to make prison life bearable. This assumption had some hard sledding in the early years of the state prison, when the congestion, and evils arising from poor administration tended to discredit the entire system of imprisonment "at hard labor." The author of "Inside Out" was not the only advocate of the abolition of labor in prisons and of the substitution of solitary confinement without labor. His opinion that the labor of the prisoner was generative of depravity was very likely shared by many others especially when labor was assumed to mean labor in association. The conclusions of the Hopkins Committee of 1820 were in part of that nature. The permanence of prison labor for the inmates' sake was assured, however, when the attempts at solitary confinement in the early years of the Auburn prison proved so disastrous.¹

The law of 1796 makes no mention of any principle upon which to base the labor of prisoners, except in a general way, by indicating the desirability that the labor of convicts maintain the prison. The first explicit statement in connection with the State prisons, that the prisoner's welfare be regarded in the establishment of a system of labor, is contained in the law of 1817 which introduced the piece-price system. In the proviso of the act we read: "that the habit of industry is the best preventive of vice—to encourage which habit in the criminals in the state prisons

¹ Report of Gershon Powers, agent of Auburn Prison, submitted to the Legislature, January 1st, 1828.

whom the state is desirous of reforming, it may be useful to allow them a reasonable portion of the fruits of their labor”

It was with the intensification of the movement against contract labor that the interest of the prisoner was more clearly recognized and utilized as one of the arguments for its abolition. During the period intervening, the House of Refuge was probably the only institution where constant thought on the inmate’s welfare was maintained. The investigations of the commission of 1866 brought to a head the recognition of the danger to the welfare of the prisoner, both in lack of employment and in the exploitation of his labor. The growth of the “overwork” system and the attendant evils of pressure by contractors had brought things to such a point that not even the most callous could fail to recognize the necessity for some change. We find, therefore, that from two different angles the prisoners’ interests are emphasized; one that of his exploitation, involved especially in contract labor, and the other that of the effects of possible idleness in case of the abolition of contract labor. The latter is clearly seen in the emergency calls of prison executives upon the legislature, first after the passage of the law of 1883 abolishing contract labor, and again after 1887 when the old contracts had expired. Not until the Fassett Law, in 1889, were the interests of the prisoner definitely provided for in the legal provisions regarding prison labor. The three-fold classification provided in that law is the first fruit, in state prisons, of the growing emphasis on the prisoner’s interests. In other institutions the physical and moral dangers of idleness were constantly discussed but without any appreciable effect. Idleness in the county jails and the city prisons was censured in the earliest reports available, beginning with those of the Boston Discipline Society. Conditions in the New York

City institutions, including the Penitentiary and Workhouse, are again scored on that basis. It was only slowly that this argument of prison labor, while always acknowledged, really did gain acceptance in our prison system.

HEALTH THROUGH LABOR

The health of the inmate is involved in prison labor in both a positive and a negative sense. Many prisoners arrive at their institutions in a comparatively poor state of health. In the lesser institutions such as the county jail, penitentiary, workhouse and also in the women's reformatories, a very considerable proportion of them arrive in a state of debility due to drink, disease or bad nutrition. Even in the state prisons and male reformatories the percentage of inmates who need immediate medical treatment is considerable. One of the essentials for physical reclamation is regular labor of sufficient intensity. Any reasonable form of labor, therefore, will contribute to his physical rehabilitation. We may justifiably regard prison labor, as a whole, to have been beneficial from this standpoint. And certain special forms of labor more so than others. These would include all outdoor labor, such as road work, farm work, forestry. Work on highways dates back to the latter part of the eighteenth century, and farming was one of the industries undertaken in penitentiaries in the "forties." Both farming and highway work have received impetus in recent years. Farming was to be an important branch of work in Elmira from its inception. It was the basis of the Great Meadow prison opened in 1911—of the State Farm for Women established in 1908 and of several of the children's institutions. Highway work has become popular in the last two decades. It has been developed to its highest extent since 1912 in the Onondaga County Penitentiary and has been undertaken with vigor in the present decade by the

state prisons. Forestry has been practiced only in the Great Meadow Prison. The interesting feature of all this outdoor work at present is, that it constitutes no longer simply another form of employment, but that it is advocated as much for its beneficial effects on the health of the prisoner as for other reasons.

The negative aspect of prison labor in relation to the health of inmates is contained in the possibility of long hours, speeding up, unsanitary industries, unsanitary workshops, accidents, and occupational diseases. There is no record of the introduction in any institution in this State of an industry intrinsically unsanitary or unhealthful. Such employment as, for example, the jute manufacture in California and other states has never been introduced here. Weaving has, perhaps, been the worst industry in this respect, but is itself not very serious. We have had, therefore, hardly more tuberculosis or other respiratory diseases than may be attributed mainly to the natural debility of prison inmates as a group, and to the very untoward living conditions in cells such as those of Sing Sing and Auburn. Long hours and speeding up have also had only limited vogue in this state, and that only during short periods in the contract labor era. The accident rate in prison industries has not, to our knowledge, been thus far carefully studied. It is hard to say, therefore, to what extent prison labor has been dangerous to the inmate from this standpoint. We do know, that there has never been a sufficient amount of attention paid to the installation of safety devices on machinery used in prisons. Even such a simple thing as the mangle in the laundries has only in rare cases been properly protected against accidents. Severe, and even fatal injuries have been recorded in laundry departments, due to the lack of proper appliances on the centrifugal drying machines.

Positively, healthful employment has been especially de-

veloped in the women's and children's reformatories. Bedford was perhaps the first to employ women prisoners at farm labor of all kinds. Its example has been followed by other institutions for women, so that now practically all but the very heaviest farm labor in our three state reformatories for women is performed by the inmates. The State Industrial School at Industry, the Juvenile Asylum, the Jewish Protectory, the Lincolndale branch of the Catholic protectory are all developing outdoor employment for their children largely as a matter of healthful occupation. Compared with other factors in the development of the prison labor of the state, the relation of the work to the health of the prisoner has been unimportant.

ECONOMIC REHABILITATION THROUGH LABOR

What we are most likely to think of in connection with the prisoner's interest in prison labor is the question of his earnings. And here we have two points in mind. One, the economic rehabilitation of the prisoner himself upon his discharge, and the other, the support of his dependent family. Both are more or less opposed to the venerable desideratum of making institutions self-supporting. We now regard it a more progressive principle that the prisoner be compensated for his labor as nearly as possible on the same basis as he would be if outside of prison. We hold that loss of freedom need not necessarily forfeit the right to earn one's living, though reasonable deductions are to be made for his maintenance and education while in the institution. Needless to say, no prison has as yet succeeded either in accepting this principle at full value or in introducing it to an appreciable extent. Somewhat greater progress has been made toward the realization of the subsidiary principle that the earnings of a prisoner from his labor while at the institution be made available for the maintenance of his de-

pendent family. We have gone so far in some cases (not in this state, but in *e. g.* Michigan and Minnesota) as to be willing to make special appropriations for the support of the prisoner's dependent family, and trust that the proceeds of his labor in either productive or nonproductive employment at the institution would make up the sum. As a matter of fact, more attention was paid to this matter in the early part of our prison history than today. Before the law of 1796, of course, there is no trace of any legislation, ordinance or regulation on the subject. This is simple to explain: first, there was little imprisonment and therefore little labor in prisons prior to that date. Secondly, such labor as was carried on, was mostly in the Workhouse in New York City which, as we have indicated, was a semi-eleemosynary institution and was conducted on the assumption that the inmate was unable to make his own living. The law of 1796 provided that inmates of the state prison were to be charged with the expense of their prosecution, clothing, bedding and subsistence, and with a due proportion of the expense of the raw material and implements used in employing them; it was further provided that if the amount credited to them from the avails of their labor "shall exceed the debit side of the account it shall be in the discretion of the inspectors when such convict is discharged, to give him or her a part or the whole of such excess, and if the whole is not given to carry the residue to the credit of the state" An amendment¹ two years later changed this provision somewhat, by permitting the inspectors to "accredit them (the prisoners) for their labor in such sums as they shall deem just and right." There is no very clear statement of just how much under either of these provisions the prisoners actually earned. But the principle

¹ Chap. 56, laws 1798.

was maintained, and that it was not a dead letter may be assumed from the fact that in the law of 1817 which introduced the piece-price system, it was again provided that the prisoners shall have a reasonable portion of the fruits of their labor to be set apart and secured for them or their families. We do not know how far this provision was translated into dollars and cents. The law of 1821¹ which tentatively authorized the introduction of contract labor, permitted the agent of the prison to "credit annually on the books of the prison one half of the net earnings of every convict over and above the regular task he was daily to perform, to be paid to him on his discharge." The agent was prohibited from recommending the pardon of a convict if he had failed to earn an average of 25 cents a day during the preceding year. Under this system there must have been too much money earned by the prisoners, for another law in 1824² limited the amount payable upon discharge to \$3.00. The general revision of 1828³ retained the feature based upon the law of 1821. The revisers, in including the sections on the payment of earnings to prisoners (sections 57 and 58) made certain minor changes in the wording, permitting as a maximum payment fifty per cent. of the net value of extra work performed by prisoners. They discarded the original wording, which was based on work performed over and above "the regular tasks," as objectionable, being a type of speeding up.⁴ No further direct legislation to provide earnings for prisoners was passed until the Fassett law in 1889 with its sickly "ten per cent." provision. In the intervening period, covering the contract labor system,

¹ Chap. 224, laws 1821.

² Chap. 263, laws 1824.

³ R. S. 1828, part 4, chap. 3, title 2, art. 2, sec. 58.

⁴ See note of revisers on section 57.

there was in fact more money earned by prisoners than at any other time, but that was accomplished by means of corrupt and unscrupulous exploitation which helped eventually to discredit the system and to abolish it entirely. There was apparently no differentiation during this period between moneys paid to the prisoner for himself to be used by himself and the grant of moneys for the purpose of supporting his family. The earning of extra money during the contract labor system was not an unmixed blessing, for immediately the prisoner had earned something, some foreman, or other civilian connected with the contractor, was ready to sell him contraband goods, and most prisoners could not withstand the temptation to buy. Moreover, these things were sold to the prisoners at exorbitant prices, which brought the vendors one hundred to two hundred per cent. profit, and quickly consumed the inmate's funds. Overwork in our prisons was never an opportunity, but only a means of exploitation. No laws were ever passed for its regulation.

The Fassett Law, in order to render the state use system acceptable to the prison population, which was by that law deprived of the advantage of overwork, introduced the provision that the warden shall establish a uniform rate of wages (and fines) for the labor (and conduct) of the prisoners, such wages, however, not to exceed ten per cent. of the total of the prison earnings. This provision stands today practically as contained in the Fassett law. It has become standardized in the form of the ridiculous daily wage of a cent and a half *for those prisoners only, who are engaged in "productive" industries.*

So far as we know, no institutions outside the state prison system ever made even a serious attempt to give the prisoner any wage or bonus or other reward for work. Wherever the contract system existed there was naturally the same opportunity for overwork and extra earnings as in the

state prisons. This was true of the county penitentiaries, from their organization to the abolition of contracts. Weak, half-hearted attempts to introduce the principle in other institutions were made from time to time. Thus, in New York City, it was proposed several times to introduce by ordinance the system of paying to the families of men held on charge of non-support, a daily allowance of fifty cents. In various county jails, when some special piece of public work was done, the boards of supervisors would, by arrangement from time to time, permit the prisoners some limited earnings. In one case only, so far as we know, namely in Orange county, did these earnings amount to as much as one dollar a day. It lasted only a short time, during the construction of the jail, and was given for labor performed for the contractors employed on the jail construction. When prisoners of state prisons were assigned to the Conservation Commission or the Highway Department, allowances were made for their labor but the money went to the prison department not to the individual prisoner. It was not until 1915 that compensation of prisoners in the county penitentiaries was authorized. Chapter 366 of the laws of that year permits the supervisors of Erie county to pay to such convicts as are employed on highway construction a daily wage not exceeding ten cents. Chapter 288 of the laws of 1915 extended the application of the Fassett law to county jails with a maximum of twenty cents per day attached.

In a modified form, wage earning by prisoners has been in vogue at Elmira, beginning with the time when the credit system was translated to a monetary basis. Inmates are permitted to earn certain sums by proficiency in labor, education, trade work and conduct. Against these credits they are charged with the cost of their maintenance, subdivided into its constituent parts. Any balance due to the

inmate on this basis at the time of his discharge is paid to him in cash. Occasionally these balances constitute fair sums, not infrequently as high as \$50.00. This is probably the highest form which the payment of prisoners' earnings has as yet attained in this state, though neither legally prescribed nor technically so considered.

LABOR FOR INDUSTRIAL TRAINING

We come now to the last aspect of the prison labor problem from the standpoint of the prisoner's interests, namely that which deals with his industrial training. Whether their training was at all times acknowledged as an integral part of the purpose of employing prisoners, it is difficult to say. The law of 1817 mentions the training value of labor. In the principles underlying the House of Refuge, it is explicitly stated. At present, and since the seventies of the last century, when the reformatory movement was launched, it is conceded to be the most important aspect of prison labor, and is, perhaps, more than the other features involved, gaining general recognition. But the employment of prisoners in penal institutions may train them for useful occupations after discharge even when that is not the conscious purpose of their employment. In the Newgate prison it may hardly be considered to have been the conscious purpose. That it was nevertheless accomplished, is clear from the opposition that was aroused in two directions: first from the general public which feared the training of expert locksmiths among prisoners (that being one of the industries introduced), and, secondly, from free labor which feared the competition of this new corps of artisans being regularly added to their numbers.

Throughout the opposition of free labor we find this aspect namely, the training of prisoners in trades in which they become competitors with free labor again and again

coming to the fore. With the gradual disappearance of the old-type artisan, and the increased importance of the less skilled laborer, objection on this score diminishes. We have now reached a state of public opinion in which the opposition to prison labor never takes this particular form. This fact renders it less difficult to advocate the definite industrial training of prisoners as part of the program of present-day prison reform.

There is still some difference of opinion as to what training really should consist in. One assertion is that labor, no matter of what kind, has training value in itself, in that it develops the habit of application. There is a good deal of truth in this assertion, for it is generally conceded that those who are admitted in penal institutions have rarely worked regularly prior to their commitment. This is the minimum training value that must be admitted for all forms of labor. A more definite form of training, urged for comparatively unskilled work, is obtained by direct assignment of the prisoner to some industry. The administrator counts on "breaking him in" assuming that he has enough time in which to develop him into a real workman and depending on a kind of catch-as-catch-can method of acquiring the trade technique. Most of the trade assignments have been made in this way. Whether shoe-making, tailoring, foundry, knitting or what-not, the prisoner has simply been assigned to his shop, and it has been the duty of the keeper or instructor in charge to see that he learned something. This is the most general kind of training in prisons.

A higher form, by specialized training more or less along trade-school pattern, was inaugurated in the Elmira reformatory upon the dissolution of the labor system at that institution, following the abolition of contract labor. Since the beginning of the last decade of the nineteenth century, organized trade instruction of that type has been given at

the Elmira reformatory. It defined the principle, set the standard, and established a model. It was followed later in the House of Refuge, in other children's institutions, at the women's reformatories, and is part of the plan for the future system of penology for the entire State. In Elmira and at the other male reformatories industrial training takes generally the form of instruction in mechanical trades. A high degree of efficiency and complexity has been attained at Elmira. At the House of Refuge, and the New York City Reformatory for Misdemeanants, imitations have produced a less competent system. In the women's institutions such training has taken the form principally of organized instruction in domestic science, sewing and dressmaking. It has attained its highest form among these institutions at Bedford.

A beginning in the introduction of organized trade instruction in the state prisons has been made by the Mutual Welfare League in the last few years. It was through the initiative of some members of the League and with the encouragement of the warden, Mr. Kirchwey, and of specialists from the educational field, that a vocational school was actually created at Sing Sing and developed almost exclusively by inmates. The future plans for the state prisons, if progressive penologists are allowed to have their way, will owe much to the enthusiastic initiative of a few prisoners in Sing Sing in the year 1915.

Where prison labor has been truly organized for the purpose primarily of industrial education, the labor problem is transferred into the field of education and should be more properly treated in that connection. That is particularly the case in the Elmira reformatory and in the women's and children's reformatories.

4. FREE LABOR AND BUSINESS INTERESTS

With all the inefficiency and lack of intelligence manifested in the history of prison labor, with the difficulties arising out of the lack of trade-training for prisoners, perhaps even with the interference on the part of politics, it might still have been possible, in time, to develop a satisfactory labor program in penal institutions, had it not been for the two great causes of disturbance, namely, the activities of free labor and of certain commercial interests. Through the agency of these two factors the entire prison system has been kept in constant turmoil. Yet it must be admitted that the liberation of the prisons from the contract labor system and its evils, was due primarily to these two influences. Had it not been for them we might still be conducting our prisons on the contract labor plan.

The interests of free labor were first to be affected. Business interests began to take notice of the competition of prison labor only towards the middle of the last century. This chronological sequence is easily explained. The beginning of prison labor falls in the period when the artisan was more nearly the unit of production. The competition of prison labor therefore was felt by individual working men in the particular trades that had been introduced in the State prison. No large manufacturing interests were affected. As the form of production developed more into the modern factory system, the individual artisan ceased to be of the same importance as earlier. Thereafter the manufacturer was the one who felt the competition of prison labor rather than the individual working man. The opposition to prison labor proceeded, therefore, first from free labor but continued long after the interests of the individual artisan had become secondary. When manufacturers took up the fight they presented their own case in terms of the interest of free

labor, thus obtaining the support of workingmen and the benefits of a more altruistic light. Investigations at different times, as in 1834 by a legislative committee, and in 1868 by the Prison Association, show that free labor was not nearly so much affected by prison labor as appeared from public announcements and arguments.

Organized labor of today assumes a very liberal attitude towards prison labor and conceives of no intrinsic opposition of interests between the two. It is difficult, therefore, to escape the impression that a good deal of the opposition by free labor was nursed by other interests than their own, namely those of manufacturers engaged in the same trades as those carried on in the prisons. Prison labor had established a competition between contractors obtaining undue advantages from prison labor on the one hand and manufacturers on the other hand who were required to carry full overhead cost as well as to pay normal wages.

In the earlier period, while the units of population were small and transportation facilities comparatively poor, the employment of a considerable number of prisoners at a given trade did, in fact, interfere seriously with the artisans engaged in the same trade in the same locality. It is easy to see how, for example, the locksmiths and shoe and boot-makers of the city of New York were seriously menaced by the wholesale employment of prisoners at these trades when the products of prison labor were disposed of almost entirely within the local territorial unit. It must be admitted, therefore, that they had a good case. It must also be admitted that later the manufacturers' case was equally good as against the contractors engaging in prison labor, for the latter were given the use, free of rent, of manufacturing premises, heat and light, and, in addition, labor at less than half the market value.

In respect to this situation, again, as in the case of the

entire prison system, a single unsatisfactory feature was used as an argument for abolishing the entire system. Just as, for example, the general evils arising out of the congestion at the Newgate prison were responsible for a movement not simply to remove congestion but to abolish the entire system, so too, the results of the serious local competition with artisans and of the competition in market prices and cost of production of contractors with outside manufactories, were used as arguments not for abolishing simply the specific evil factor in the competition but for abolishing prison labor in its entirety. The unwillingness on the part of state authorities to discontinue prison labor must be interpreted not as inability to see the unfairness of the situation, but as an unwillingness to wipe out the entire system because of its partial failure. The state is to be commended for refusal to abolish prison labor but is to blame for having been unable to see clearly enough that the objections could have been removed by an intelligent analysis of the situation and by consistent action.

1788

The first trace of opposition to the interests of free labor is found as early as 1788, the same year in which the use of jails and of work-houses for the punishment of misdemeanants was first authorized by law. A presentment of the Grand Jury on May 14th of that year protests against "the employing of criminals and vagrants" on contracts made by the Almshouse commissioners with private persons, "by that means depriving the industrious poor of the means of subsistence."¹ But the opposition assumes no dimensions of importance until the advent of the state prison era.

¹ *Min. C. C.*, vol. i, p. 369.

1801

Within four years after the opening of the Newgate prison the first successful assault was delivered upon prison labor in the interests of free industry. A law passed in 1801 required that boots and shoes made by convicts be branded with the words "state prison."¹ Another more powerful assault was contained in a law² three years later prohibiting the employment of more than one-eighth of the convicts in the state prison in the making of boots and shoes (excluding from that number women or men who had learned the trade before commitment). No further important change as a result of the activities of free industry appeared until the twenties (the important legislation of 1817 to 1821 seems to have been independent of agitation on the part of free labor or of competing manufacturers). In the twenties it was still free labor of the artisan type that appeared in opposition. It was still the fear of direct competition, rather than the fear of the effect on prices through the indirect competition by contractors with free manufacturers. The *New York Mechanics Magazine* of May 17, 1823, put the problem very clearly:

You see sir what the employment of state prisoners will lead to. I presume you see; for I cannot believe that any one can be so blind as not to discover the dissatisfaction it creates in the minds of all those whose business happens to be introduced in the prisons. You now perceive that the cabinet makers have had a meeting and that they protest in strong language against the employment of prisoners in their art. The cabinet makers now begin to feel alarm; they are now awakened to a sense of interest and their duty; in endeavoring to put a stop to this vile business of manufacturing in the prison

¹ Chap. 121, laws 1801.

² Chap. 89, laws 1804.

to the disadvantage of mechanics and mechanics only. They now see that the brushmakers, combmakers, shoemakers and others have cause to complain; and I hope they will also see as well as all other mechanics that the only way left for redress is for all the mechanics whether their business be at present interfered with or not, to turn out at the next general election, and to elect or give their suffrage to such and such only as will pledge themselves to use their best endeavors to stop the evils of which we so justly complain. Let no man, who is a mechanic, think himself safe, because his business is not conducted in the prison; for he knows not how soon an attempt may be made to wrest from him whatever may be dear to him, and . . . the opportunity of supporting his wife and children by the labor of his hands and the profit of his trade. . . .

Apparently no further legislation was passed after that of 1801 and 1804, despite the continued agitation of free labor. In 1830 the "Farmers' Mechanics' and Workingmen's Advocate" of Albany in an article of some length (July 14), stated the case of free labor by quoting the prices charged for various kinds of work by free labor as compared with prison labor. The point of the argument was, this time, not the direct competition by underbidding individual pieces of work so much as the indirect, insidious reduction of the general wage level. In this article perhaps more than anywhere else we are brought face to face with the fact that the loss to free labor, as the loss to competing manufacturers also, is caused not by any corresponding advantages gained by the prison or the prisoner, but by exorbitant profits of the prison contractor, obtained through his ability to undersell his competing manufacturer, and to reduce the wage rate of free labor employed by competing manufacturers. In 1831 the mechanics in New York City petitioned the legislature in regard to marble cutting and iron industries carried on at Sing Sing, maintaining that outside labor was injuriously

affected by convict labor in these cases. A tremendous lowering of market prices as a result was quoted, and again, as at the beginning of the century, it was the individual artisan that seemed to suffer. A committee appointed by the legislature to examine into the petition evidently was convinced of the seriousness of the situation but was unable to offer any solution other than the complete abolition of prison labor.¹ Another assembly committee in 1833 did no better. By 1834 opposition to prison labor had assumed formidable dimensions. More than twenty thousand persons from different parts of the State joined in presenting petitions to the legislature, all entered on the same printed forms, showing state-wide organization. Local meetings were held and their resolutions and proceedings were sent to Albany. The substance of these petitions centered on the fact that "by reason of convict labor prices of manufactured articles had been so reduced as to leave little or no competition among the honest industrious classes of our citizens who have not forfeited their liberty by the commission of any crime."² Considerable feeling was manifested and comparisons indulged in, between honest free labor and the "labor of thieves." Again a commission was appointed, this time a senate committee,³ and was directed to inquire "into the expediency of so regulating prison labor that the same may not interfere with the free labor of mechanics and artisans." The commission's report was not very favorable to the latter. It showed that 1311 convicts employed in 32 distinct industries within the prisons constituted little menace to a total of 125,000 mechanics in the State; that for every 5000 new mechanics

¹ Assembly document 1831, no. 279, vol. 3.

² Assembly documents 1834, no. 289, vol. 4.

³ Senate documents 1834, no. 114, vol. 2.

added to the total number annually not more than 18 had learned their trade in prison; that the annual discharge of convicts thus instructed, added at the rate of only 55 to 125,000 mechanics in outside industries. They concluded that there was little if any real competition with outside mechanics growing out of the operations of the prisons; that convict labor was sold for the highest price obtainable, and that the risks of the business were such that contractors could not ordinarily afford to sell under the market, and that therefore they obtained no real monopoly; that the markets were not overstocked by reason of prison labor, and that the depression in prices was not due to such a cause; that there was no competition between convicts and mechanics because the convict is a slave of the state and has no control over his own labor; and that the existing system of the prison labor was not oppressive to outside mechanics or injurious to society. The findings of the committee led to no action, but disposed of some of the extravagant claims of the foes of prison labor.

COMMISSION OF 1834

The Assembly in the same year took up the question on its own account and made a much more philosophical contribution and also some practical, if not practicable, suggestions. One of these was the establishment of a penal colony in some distant region. They were more sympathetic to the interests of free labor. Recognizing their inability to solve the problem, they did not arrive at superficial conclusions but recommended the appointment of a commission which would go fully into the subject. Accordingly, the same year,¹ the Governor was authorized to appoint three commissioners for the purpose. This commission was to

¹ Chap. 252, laws 1834.

examine, among other things, the question of "whether any mechanical trades carried on in either of said prisons ought to be discontinued by reason of its injurious competition with the labor of mechanics or artisans out of the prison or for any other cause." Governor Marcy in 1835 expressed himself in sympathy with the attitude of labor and in general showed a very liberal open-mindedness. Early that year, the commission appointed in 1834 made a report which contains a very interesting and intelligent résumé of the whole problem. For the first time, perhaps, the evils of the contract labor system were brought into the discussion of the situation and that system was discussed on its own merits. It was this commission that suggested the introduction of only such industries of which products were at the time obtained by importation from foreign countries. They suggested that contract labor be discontinued and asked the attorney-general whether contracts might be annulled. The labors of the commission resulted in the passage of a law¹ in 1835, which provided the following important measures: first, a two months' publication of an intended contract, stating the terms of the proposed contract, not to exceed five years, and the number of convicts who might be employed thereon; second, the introduction of the silk industry as representing no competition with free labor or with independent manufacturers.

The practical effects of the law were hardly greater than those of laws resulting from previous commission reports. The subject of convict labor continued to take its place in Governors' messages and legislative discussions. In 1840 petitions from the Mayor and common council of New York City with 4000 others were presented to the legislature requesting the abolition of all mechanical labor in prisons.²

¹ Chap. 203, laws 1835.

² Assembly document no. 339, 1840, vol. 8.

In 1841 a satirical petition was sent to the legislature asking that "schools of law, medicine and theology may be established at Sing Sing for the benefit of the convicts. . . ." The following year more petitions came in, from one end of the state to the other, and the legislature responded by a law¹ reenacting the provisions of the law of 1835, and providing a method for the enforcement of a certain provision of that law which had caused considerable disagreement and some feeling. It related to a technicality by which the requirement that prisoners should not be taught a new trade was circumvented by the prison authorities. The same law of 1842 also provided another commission to study the possibilities of mining and smelting operations by prison labor in the hope of avoiding or reducing further conflict with free labor. Their efforts resulted in the establishment of the Clinton Prison with its mining and smelting industry in 1844.

1844

All the commissions and laws during this long period failed to have an appreciable effect on the situation. Contract labor continued, and competitors of prison contractors were no more successful than organized labor in abolishing it. The hardest blow came probably from neither of these interested parties but from the prison reform movement *per se*.¹ It was the activities of the Prison Association that were first to demonstrate that contract labor was not only injurious to free labor and business interests but that it was financially unprofitable to the state and disastrous to the individual prisoners. The final abolition of contract labor by the law of 1883 and by constitutional amendment in 1894 was due nevertheless to the efforts of organized

¹ Chap. 148, laws 1842.

labor, now supported by additional arguments of state economy and ordinary humanity.

1847-83

The period between 1847 and 1883 represents a concerted effort on the part of all those directly interested in the abolition of the contract system. This appeared to be the only way of satisfying all parties concerned. It took a long time, however, before all the joint forces of these opponents of contract labor were able to overbalance the political power of contractors who were constantly accumulating fortunes from the existing system. In 1882 the democratic organization in New York City found the situation ripe enough to render it desirable to offer resolutions to the Assembly denouncing contract labor as prejudicial both to free labor and to employers of "honest" labor. At length the law of 1883, providing for a referendum to the people on the question of contract labor, brought about its abolition by a vote of 405,882 against 266,966. Weak attempts to reestablish the system under other guises failed. The laws of 1888 and 1889 finally sealed its fate and the constitutional amendment in 1891 irrevocably disposed of it. In 1897 the provisions of the constitutional amendment took full effect. From that time on the active interest of these two most effective forces in shaping the history of prison labor, namely, free labor and competing manufacturers, ceases to count.

We find a few instances in the last twenty years or so of interference with prison labor by outside interests but they are comparatively unimportant. One such instance was the elimination of the printing and photo-engraving industry, except for penal and charitable institutions, in the interests, it is thought, of large printing firms with political backing. Another example was the release of the Soldiers' and

Sailors' Home in Bath from the obligation to purchase clothing from the Elmira reformatory, effected in 1916.

CONCLUSION

The history of prison labor is the result of several independent forces which were unable to combine in compromise. The financial interests of the community upon which devolved the burden of maintaining its penal institutions, the interests of prison administration and discipline, the interests of the prisoner who is entitled to all the instrumentalities for rehabilitation which organized society, in part responsible for his criminality, may be able to afford, and the interests of labor and business competitors, have been, in the first instance, irreconcilable. It has taken almost a hundred years for these forces to effect a compromise which, however, has been more the result of accident than of intelligent planning. The state use system, despite the way in which it came about, does in fact carry in itself the possibilities for a completely satisfactory solution, if organized with efficiency and intelligence. But it must be based on the principle that the conduct of penal institutions is an educational duty of the state; that it is an expense not only necessary, but constituting an investment in human material and social organization, likely to bring a rich return.

CHAPTER X

EDUCATION—RELIGIOUS, SECULAR AND INDUSTRIAL

THE order given to the types of education in our title represents the chronological order of their inception and also the order in which their importance has been acknowledged. Religious and secular education in the prisons were for a considerable period considered as one. In fact, secular education grew out of the work of prison chaplains to whom illiteracy was only part of the general ignorance of religious teaching and meant, particularly, inability to read the Bible.

RELIGIOUS EDUCATION 1826

The earliest religious education on record in this State was given by Rev. John Stanford of New York City. The first annual report of the Boston Prison Discipline Society, issued in 1826 and quoted at length by Wines and Dwight, surveys the religious work in the State prisons of the time and speaks with admiration of the work of Mr. Stanford, a man more than seventy years of age at the time, who was chaplain of the Penitentiary, the Bridewell, the Debtors' Jail, the City Hospital and the Almshouse in New York City. He preached regularly some ten sermons a week in these various institutions. He had taken an active interest in the organization of the House of Refuge, and had, at an earlier period, conceived and proposed a plan for a juvenile refuge institution. Mr. Stanford's work was entirely voluntary.

The first resident chaplains were assigned to Auburn and Sing Sing Prisons through pecuniary aid furnished by the

Prison Discipline Society. By 1828, the New York Legislature appropriated \$300 towards the salary of the chaplain at Sing Sing. The work was performed here also by Mr. Stanford, at that time almost an octogenarian.

SING SING AND AUBURN

The laws of 1824 provided that a Bible be supplied for each convict at the Auburn Prison and the revised statutes of 1828 extended the provision to include both State prisons. At the latter date, Warden Powers reports \$200 available for chaplains' services in Auburn. The work of the prison chaplains developed in this period very slowly and at first did not include the secular education of prisoners. The beginning in this direction seems to have been made in the Newgate Prison in 1822. The author of "Inside Out" refers to the organization of schools there by the same Mr. Stanford. The first approach to a distinct combination of religious and secular instruction is seen in the Sabbath School at Auburn about 1827.¹ In that year there is reported a school of 160 pupils divided among 31 classes and instructed under the general superintendence of the chaplain by 32 theological students.

HOUSE OF REFUGE 1832

In the House of Refuge, with its liberal principles of reformation, religious services were held from the first. The rules and regulations of 1832 provided for three Sunday services, one in the morning and two in the afternoon. The earlier attempt to have more frequent services was abandoned, "experience having shown many of the children are unfit to attend after their daily schooling and labor are finished."² The House made it a practice also to give a

¹ B. P. D. S., 1830; E. C. Wines, P. A. report 1867.

² Rules and regulations for 1832 in documents, p. 284.

Bible to every indentured child and to every child at the institution who was able to read.

SING SING WOMEN'S PRISON 1844

The next important combination of secular and religious education we find in a highly successful form in the Women's Prison at Sing Sing, under the leadership of its unsurpassed matron, Mrs. Elizabeth Farnham. This resulted at the time in some complications, for the chaplain felt that Mrs. Farnham was encroaching upon his field and that her undue emphasis on the secular side made it more difficult for him to work conversion among the inmates. In fact the situation became so strained that the Rev. Mr. Luckey made public accusations against Mrs. Farnham, which resulted in an investigation by the Prison Association. The results disclosed an irreconcilable friction between the formal, uncompromising form of religious instruction represented by the chaplain, and the more generous type practised by Mrs. Farnham which sees the common interest of religion and education. Did space permit, it would be exceedingly interesting to quote some of the testimony taken in the course of the investigation. Some of the objections to Mrs. Farnham's regime were, for example, that she supplied the women in her prison with such morally destructive reading as Dickens's "Nicholas Nickleby," and "Oliver Twist."

LAWS OF 1847

By the laws of 1847 the office of chaplain was definitely established, his duties clearly outlined and his work made mandatory. Section 60 of the laws required the chaplain to visit the convicts in their cells and to devote one hour each week day and the afternoon of each Sunday to giving them moral and religious instruction. He was required to

provide a Bible for each room and a hymn book to each convict at the expense of the state. Religious worship for Sundays was also prescribed. The chaplain was further required to make an annual report to the board of inspectors relative to his work and was assigned the somewhat incongruous duty of tabulating the statistical information about inmates required by the schedule provided earlier by the Prison Association.

In a historical survey of religious work in the state prisons, based largely on his extensive study in 1867, E. C. Wines makes special mention of the Rev. Jared Curtis, the first resident prison chaplain and the originator of the prison Sabbath School in America, both the resident chaplaincy and the School initiated at Auburn in 1827. His example was soon followed in other prisons and in other states. Special mention should be made also of Rev. Canfield who did some excellent work in Clinton Prison in the sixties. Prayer meetings for prisoners were organized for the first time by the Rev. John Luckey, chaplain at Sing Sing, during the incumbency of Warden Hubbell in 1862.

In respect to the religious work of prisons as in respect to the general administration, it is true that everything depends upon the calibre of the incumbent, the intensity of his interest, the unselfishness of his attitude. Besides the purely religious ministrations, including services, Sabbath Schools, prayer meetings and individual exhortations, the chaplains have been peculiarly in a position to aid prison inmates and their relatives and families in ways that were not open to other officers or private individuals. There may have been some abuse of this opportunity or power, for we find in the rules and regulations of the county penitentiaries beginning at Albany and copied, as usual, by the later ones, that the work of the chaplains is very carefully circumscribed. He is given the privilege and duty to

visit at any and all times the male prisoners when in their cells or in the hospital, to instruct and teach those that can not read and to administer to all, such advice, instruction and consolation as he may deem best calculated to promote their reformation. . . . He shall attend and perform such service in the chapel on every Sabbath day, at such hour or hours as shall be designated by the superintendent. . . . He shall not furnish the prisoners with any information or intelligence in relation to secular matters. . . . nor shall he have any other intercourse with the prisoners than such as shall be necessary and proper in teaching them to read and impart such moral and religious instruction as shall be best calculated to promote their subordination, reformation and spiritual welfare. . . .

SECULAR INSTRUCTION 1822

The reference above made to the organization of schools in the Newgate Prison by the Rev. Stanford as reported by an inmate¹ is corroborated in a brief reference by the Legislative Committee of 1822 which also states that "schools are established in the prison."

The next mention of secular instruction in State prisons is found in a report by Gershom Powers in 1828. Two years earlier, he reports, in the early spring of 1826, measures were taken to ascertain the number of convicts who were unable to read. Between fifty and sixty, or about one-eighth of the population, were found to belong in this group. As a consequence, the Sabbath School above referred to was organized. Fifty of the convicts, none of whom were over twenty-five years of age, were divided into small groups of five or six and instructed by volunteer theological students. Later in the year the number of scholars was increased to one hundred, and then to one hundred and twenty-five. In 1828 there were some twenty

¹ "Inside Out."

volunteer teachers from the theological seminary working at the education of inmates under the general supervision of the chaplain. Their work was followed with great interest by the local Sabbath School Union which aided it to some extent. A report in 1829 to the Legislature of New York by Commissioners Hopkins, Tibbetts and Allen refers to the construction at Sing Sing of a chapel and school room. This may have referred to a room for secular instruction or possibly for purely religious work. In 1841 the Prison Discipline Society of Boston quotes Governor Seward of New York as stating that he "would have the school room in the prison fitted as carefully as the solitary cell and the workshop, and although attendance there cannot be so frequent, [he] would have it quite as regular."¹

STATE PRISONS 1847

In 1847 secular instruction received its legal approval and the assurance of continuity in the new prison law passed in that year. Section 61 of the law provided for the appointment of two instructors by the board of inspectors at each of the three State prisons (Clinton Prison had been recently opened). It was to be their duty "*in conjunction and under the supervision of the chaplain*" to give instruction in English. Not less than one hour and a half daily, Sundays excepted, between the hours of six and nine in the evening, was provided for school work. Report on the work was to be made by the chaplain who had general charge. New York State was probably the first one that created the office of prison teachers, but unfortunately the salaries were placed at the ridiculously small sum of \$150 per annum and appointees held office by political favor.

In the meanwhile school instruction had been fairly de-

¹ Quoted from Wines and Dwight.

veloped at the House of Refuge. As early as 1825 two hours of school were provided daily for each child. In the morning it was to be regular school work based chiefly on reading from the Testaments, and in the afternoon or evening it was to be a lecture or talk by the superintendent. The following year school hours were raised to four daily, two hours in the morning and two in the evening. The "three R's," geography, and bookeeping were taught. The rules and regulations of 1832 provided for "not less than from three to four hours per week" for literary instruction. This seems a surprising reduction from the standard set in 1826, but it may be merely an unclear statement, either of the earlier date or in the regulations of 1832.

SING SING WOMEN'S PRISON 1844

A most satisfactory form of education in amount and kind is found at the female prison in Sing Sing during the few years of incumbency of Mrs. Farnham. To judge from her reports she had a complete philosophical grasp of the function of education and understood its meaning beyond verbal definition. The entire routine of the institution under her management became educational. With definite instruction, distribution of library books, reading to the women, and arousing their interest in general topics, went a personal interest, the introduction of kindness instead of force in the discipline, and a scientific attitude toward the inmates and their progress. Mrs. Farnham was a remarkable woman who did pioneer work of high excellence and who does not seem to have been fully appreciated even by her supporters.

From 1847 almost to this date, school work in the state prisons has been more or less a stereotyped matter. In the sixties, especially, the work of the school teachers is reported as exceedingly poor. The two teachers at each

prison spent an hour and a half every evening in going from cell to cell and giving brief lessons to a very small number of convicts.

. . . with all the haste they can make, some weeks will ordinarily be consumed in making a single round. . . . A competent teacher ought to be employed who shall give his whole time to the work, and the prisoners who require lessons should be collected in the class room for an hour or so each day. If necessary, a few of the better educated and more trustworthy convicts might be detailed to assist in the work of instruction.¹

It is not clear just when this system of cell to cell instruction was changed to the present method of class room instruction. It was, however, probably before 1904, the year in which the state commissioner of education, Andrew S. Draper, agreed to co-operate in the organization of the prison schools. Under his supervision, schools were opened in all the state prisons in 1905 with a head teacher in charge, assisted by prisoners. No improvement beyond that point has taken place to date. The system has been stagnant. Instruction has been mostly to illiterates alone. No effort was made to develop a real system of education. The law, while not followed in letter, has been followed in spirit. It provides that: ". . . Instruction shall also be given in the useful branches of an English education to such prisoners as in the judgment of the agent and warden or chaplain may require the same and be benefited thereby. The time devoted to such instruction shall not be less than an average of one hour and a half daily, Sunday excepted, between the hours of six and nine in the evening in such room or rooms as may be provided for that purpose." And certainly not more than that was done. The law itself is hardly in advance of the law of 1847. As a matter of fact, the hours

¹ Prison Association, 1863, p. 28.

of instruction have not been observed as provided. School is held throughout the day, prisoners are brought from their various shops by a messenger, and their instruction time is taken out of their work time. The reason for this has been probably the fear of permitting any prisoners outside their cells after the general locking hours.

SING SING MUTUAL WELFARE LEAGUE SCHOOL 1916

A real impetus has been given to education in the state prisons as a result of the work of the Mutual Welfare League at Sing Sing Prison, begun through the initiative of some inmates and planned and developed without any outside aid or suggestion. The prisoners succeeded in organizing a school with varied branches of instruction in which pupils worked with a will. Compared with the stagnant deadly routine instruction in the official school of the prison, the work of the Mutual Welfare School has been like an educational revolution. A separate building has been fitted out in the last year or two for the use of the Mutual Welfare League School and unless the enthusiasm ebbs or the officers of the prison discontinue their interest and co-operation we may expect to have the most interesting educational experiment successfully worked out in Sing Sing and perhaps later in the other state prisons.

The New York City institutions and the county penitentiaries have nothing more to report than the State prisons. The few attempts to establish a school on Hart's Island in New York City were sporadic and did not extend to other institutions in the city. As to the county penitentiaries, no efforts of any kind appear to have been made until 1872 when an isolated attempt is reported for Onandaga County, where the Board of Supervisors, on recommendation of the inspectors, authorized the establishment of a night school for the minor convicts and appropriated \$100 for the pur-

pose. In January, 1873, the school was opened with some sixty pupils under charge of the chaplain of the institution.

REFORMATORIES

The more than half century of stagnancy in the school systems of state prisons stands in contrast with the development of the educational systems in some of the other penal institutions, particularly the reformatories. The reformatories have a record of which they may by comparison with the other prisons, be justly proud. Up to 1881 there was the same kind of formal elementary education given at the Elmira Reformatory as in the state prisons, though probably with more efficiency and with better results. In 1881 the school head, Dr. Ford, began to develop an educational system which, still in vogue, presents some remarkable features. In its present state, after a development of some thirty years, the school is divided into two general sections: one, the "academic," the other the "primary." Pupils become eligible for the academic classes either after the completion of the primary courses, or if, on admission, their previous education justifies such assignment. The "academic" work is divided into history, civics, economics, and ethics and is conducted by the chaplains, the school principal and generally one outside professor. The most important sessions of the academic classes are held on Sundays. The "primary" section has two curricular divisions, one for language work, and one for arithmetic. Each pupil is assigned to his proper grade of each division, regardless of his standing in the other. The pupils, therefore, are not hampered in their progress in one division by deficiency in the other. This, in itself, is an advance upon the traditional system. The lower grades of language work are further subdivided in order to supply special instruction to foreign born who need in the first place, a knowledge of English.

and for the special group of defective inmates who are incapable of keeping up even with the lowest grade of normal language work. Not only the curriculum but also the organization of the teaching staff was developed with equal ingenuity. Inmate teachers are used under the general guidance of the school principal. The inmate teachers constitute a "normal class" who are in session with the school principal several times a week, discuss their program and the method of instruction for the program of the week. Teaching by text book is entirely discarded and replaced by the use of syllabi prepared for each grade in each subject, and printed and distributed to each pupil. The advantages of this type of text will be appreciated by all who have had to use text books for a mixed group of pupils. The Elmira Reformatory has undoubtedly developed what is probably the best system of secular instruction for adult penal institutions on the non-vocational side.

HOUSE OF REFUGE

The House of Refuge and other children's institutions have kept to the general grade standards of the State provided by the State department of education. On the whole, their courses of study have been, compared with the ordinary public school, fair, and the type of instruction satisfactory. The work of the House of Refuge is under the joint supervision of the State authorities and of the New York City Board of Education. Other children's institutions are subject to State supervision. In 1884, the New York City Board of Education, after examining the work of the House of Refuge, said: "The course of study in its general features is nearly the same as that of our public schools. The management of the school reflects real credit upon those having it in charge. . . ." It is perhaps rather regrettable that this may still be said of the work at the House of

Refuge, for the traditional grade instruction has not proved itself quite satisfactory even in public schools, and is very much less live and fitted for the purpose of a reformatory.

INDUSTRY

A modification of the plan of grade instruction was introduced in the State Industrial School at Industry so as to maintain the physical separation of cottage groups, fundamental in the system of that institution. School instruction is not given at a central building. Each cottage constitutes a kind of a district school necessarily containing several grades. Teachers go to the cottages every morning and afternoon and teach in the living rooms of the cottages. There are two advantages in this system: one that it maintains the classification, the other that it makes possible more individualized instruction. There is considerable disagreement, however, among teachers, many of whom regard the centralized and standardized form of grade instruction preferable to this type.

Children's institutions have on the whole based their routine on the assumption that the inmates are primarily school children. During the greater part of their history it has been customary to assign children for half a day to work and half a day to school. That is at present the general practice. School work presents rather a problem of organization and of the application of progressive pedagogical methods; its importance is taken for granted, in that respect quite unlike the situation in the state prisons and the penitentiaries.

WOMEN'S REFORMATORIES

The women's institutions were organized more than a decade after the Elmira Reformatory and, therefore, at a time when the place of secular education in the reformatory curriculum had been well established. Nevertheless the

first building at Hudson had no special class rooms and no special teachers. Matrons were expected to give such instruction as they had time for, at their convenience. When the cottages were brought into use, afternoon classes were organized and study periods set aside in the morning. But those in the "prison building" were not permitted to participate (for a long time the incongruous situation continued of furnishing instruction to those in the cottages, but not to occupants of the prison building, who, perhaps, needed it more than the others). Two years after the opening of the main building a school room was provided and sessions were held twice daily except Saturdays. By 1892, five years after the opening of the reformatory, a regular school was organized for the girls in the "prison building" as well. Two years later there were five school rooms in regular session, two of them in the "prison building." There is little record of the type of instruction given at this time.

At the Reformatory at Albion, school instruction was introduced almost immediately upon its establishment and continued to be given by the superintendent and matron around the dining tables. The work developed somewhat faster than in the first institution. But there was again the same difficulty of insufficient facilities. It was not until 1910 that regular school rooms were provided in this institution; since then regular sessions have been held mornings and afternoons.

The most intelligent and sustained efforts to give academic instruction to inmates of women's reformatories were undertaken at Bedford under the superintendency of Dr. Davis. The superintendent herself, assisted by the marshal, began the work and within a few years several teachers were added to the staff, and eventually a school principal was employed. It was in Bedford that the problem of school instruction for

the particular type of inmates was for the first time carefully thought out and clearly presented. Both the difficulties and the needs were explicitly stated. As to difficulties, the following quotation from the superintendent's report in 1905 gives the key:

Our girls have lost the freshness, the inquisitiveness and elasticity characteristic of the child's mind, and they have gained nothing compensating in habits of observation, attention and application.

She conceived therefore the work of the school to be "not so much the imparting of specific information, as the waking up of the mind." She therefore emphasized the correlation between school work and institutional problems and introduced a great deal of manual training of the lighter type. At Bedford the school work has come to be recognized as part of the general educational system in which industrial training, recreation, physical training, school of letters, nature-study, and the rest are equally important parts.

At none of the institutions, whether for men or women, adults or minors, has there been an attempt to introduce special instruction for the feeble-minded or backward. The only, and very meager, approximation has been the special class at Elmira, constituting part of the school system, and the latest special class composed of defectives who are separated from the general population for the sake of discipline.

The present attitude toward school instruction in prisons and reformatories is less enthusiastic than that of twenty or thirty years ago. It is recognized that the value of "education," while necessary as supplying some essential elements for fitting the individual for his social environment, particularly in enabling him to read, write and cipher, lies mainly in two other directions, namely: first, in industrial

or vocational training to ensure economic independence, and secondly, in the extension of the horizon of the inmate by his newly acquired power and by the subject matter with which he necessarily deals in his school work. Attention, therefore, is now being concentrated more on industrial training or perhaps, to be more accurate, upon a complete and comprehensive system of education in which the school of letters and the trade school are co-ordinate parts.

INDUSTRIAL EDUCATION

Trade instruction or industrial training has been implicit in the labor program of institutions in so far as that program automatically supplied training for industrial or agricultural pursuits. The history of industrial education in this sense may be said to extend back to the earliest forms of prison labor. In the more modern sense, however, of consciously and definitely organized instruction in specific trades, its history takes us back only to the eighties, or to be more accurate, to 1888, the year of the organization of trade instruction in the Elmira Reformatory.

The passage of the Yates law in that year had abolished productive labor in the prisons and reformatories, and Elmira, like the other penal institutions of the State, found itself forced to adopt substitutes.

One of these was military training, another, organized trade school. From that time on the reformatory gave no more thought to prison labor for institutional self-support, but only for industrial education. The Prison Commission, in distributing the industries to the various penal institutions accepted the Elmira program and refrained from assigning to the reformatory any productive industries so as to leave it free to develop its own scheme of industrial education. Very soon a definite system of trade training, employed in one of the prominent trade schools of New York City, was

adopted and introduced in the reformatory. A number of trades including machinist's, blacksmithing, sign painting, tailoring, shoemaking, barbering, electrician's, *etc.* were analyzed and curricular outlines of instruction prepared. Each step in the process of learning any trade was named and the number of hours required for its acquisition determined. The inmate assigned to any particular trade had before him, therefore, a complete list of steps towards the acquisition of his trade and the number of hours of work in which he might attain them. Credit was given for this work in the same way as for work in the school of letters or for conduct; and proficiency in trade work was as necessary towards promotion in grades as any other feature of the reformatory program. There has been but one serious difficulty with this system of instruction, namely, that few, if any, of the trades could be finished within the time that the average inmate spent at the institution. If he devoted all the time permitted by schedule to his trade he could only cover a fraction of the steps in the outline of instruction necessary in most trades. The number of graduates in any of the trades has therefore been exceedingly small. Recently a change has been made in the routine of the institution, which permits pupils to devote more time to this phase of their work, and will enable them to make greater progress.

Imperfect as the Elmira trade instruction still is, it is by far the most advanced of any in the State. In children's institutions there has been only very crude approximation to the standards evolved at the Elmira Reformatory. The definite "outlines" worked out in Elmira have implied an amount of planning and an intelligent grasp of the situation that has been lacking in the other institutions. In fact it is hardly an exaggeration to say that industrial or vocational training has not yet been properly understood in any of our institutions. It is useless, therefore, to recite any details

for other institutions, in this respect, for they represent an irrational, well-organized system.

In women's institutions the situation has been somewhat better. No great range of industries has been attempted. Practically, the domestic sciences, including sewing, have constituted the entire series of trades taught. For a considerable period after their organization, the women's reformatories contented themselves with the automatic instruction that came through routine work of the institution, its cooking, cleaning and sewing. Development has come in the organization and perfection of methods of instruction in cooking and housework, in the extension of facilities, and in systematization of the sewing work. It has been attempted also to coördinate the industrial activities of the girls with their school instruction. Of other than domestic occupations undertaken in women's institutions, the laundry and outdoor work only need be mentioned. Neither has been undertaken on a scientific basis. The laundry work has been merely organized drudgery of a semi-disciplinary nature. Little of the work in the laundries of reformatories would fit their inmates to take positions in a commercial laundry on the outside. Outdoor work has been performed less on the vocational basis and more as a health measure or educational auxiliary. Incidentally a great deal of very valuable institutional work was done this way, which otherwise would have remained undone. For example, a good deal of grading, the laying of concrete walks and stairs, cutting ice, raising truck and small fruits, and setting in orchards has been accomplished with reformatory women. Throughout these forms of training Bedford has outstripped the other institutions in practically every phase of the work.

There has been some criticism of the failure in women's reformatories to introduce a greater diversity of industries and to train women for work other than domestic service.

The figures compiled to show the occupations to which inmates go after their discharge would seem to justify that emphasis, for the greatest number by far are actually paroled to domestic service.

Some instruction in commercial subjects has been given in various institutions including the men's and women's reformatories. Teaching of typewriting and stenography is becoming a favorite form of training and promises to bring some useful results.

SING SING MUTUAL WELFARE LEAGUE

In the field of industrial or vocational training, as in the field of education, the most promising start has been made in Sing Sing under its inmate organization. Classes in commercial subjects, in machine construction, in mechanical drawing, and the like, were organized and successfully conducted by the committee on education of the Mutual Welfare League. They have had the coöperation from time to time of experts from the state education department and others. Their history has been too short to justify very sanguine predictions but if they continue to do as well as they have for the first year, and if the plan receives the support and encouragement that it deserves, we should be justified in looking forward towards rendering our penal institutions really reformatory at least in the sense of giving the inmate a kind and amount of training, the lack of which is, in part at least, responsible for his criminal career.

Another hopeful movement in the direction of trade training is represented by the work of the Psychiatric Clinic at Sing Sing. In the general plan which the Clinic has worked out, the different institutions or parts of institutions would be organized in such a way as to afford the following essential features: first, the initial psychological examination; second, facilities to test out the industrial capabilities of the

inmates; third, facilities for their distribution, training and employment in accordance with the results of the tests. It is to be assumed, of course, that in all this work due consideration will be taken of the social environment of the inmate which, after all, counts almost as much as the possession of a trade itself. In the selection of the direction of training regard should be had for the industrial distribution of his relatives and friends and the chances of employment in the social group of the locality to which he would be discharged. In this field of prison work we may perhaps cherish some hope; experiments inside of institutions coincide on the whole with experiments in our public schools and our general educational system, so that we may be able to solve both with the same effort.

LIBRARIES

Of libraries no definite mention is found in any of the institutions before 1840. Indirect references regarding the House of Refuge would indicate that some books were permitted and distributed among children as part of the general school work, and in connection with the religious services, early in its history. One should hardly admit the distribution of Bibles as the beginning of part of a library system. Beaumont and Toqueville say nothing about libraries at the New York House of Refuge, although they do mention the existence of some 1500 books at the Philadelphia House of Refuge. This would indicate that no library system had been organized there. Even at present there is in the House of Refuge no real library, but the distribution of books is carried on as part of the school work under the general direction of the school principal. Perhaps, then, the library established in the Sing Sing Prison in 1840 under the wardenship of Mr. D. L. Seymour and during the chaplaincy of John Luckey was actually the first organized library in any

of our prisons.¹ About \$300 worth of books were procured and paid for from the private purse of Governor Seward. Only one earlier library is reported by Wines and Dwight, in the Kentucky penitentiary, as early as 1802. Some kind of library must have existed in some of the New York City institutions, for the committee on detention prisons of the Prison Association in 1845 described the library in the city prison as wretched. In 1847 the new prison law charged the chaplain of the State prisons with responsibility for the library. This responsibility was stated in a rather negative way, however, making it the chaplain's duty *to prevent the introduction of improper books* and empowering him for that purpose to visit all the cells and to take and turn over to the agent any books he considered improper. If the standard of impropriety evinced by the chaplain's accusation of Mrs. Farnham in 1846 was general, we should be inclined to be pleased with the fact that the visitation of every individual cell by the chaplain was practically impossible, and probably was never attempted. The law of 1847 went somewhat further in providing for an annual appropriation of \$100 for each prison, but additional appropriations appear to have been made from time to time, the sums to be expended under the direction of the respective chaplains. The fact, elsewhere quoted, of the compulsion of one of the chaplains to travel a long distance from his prison in order to purchase books from a firm which was politically favored by one of the inspectors, would indicate that fairly regular appropriations were being made for the purpose. By the sixties a fairly elaborate plan had been worked out for the collection and distribution of books at the Sing Sing and Clinton prisons at least. The general system provided for the personal application of prisoners for books in the chap-

¹ Wines and Dwight.

lain's office. The annual appropriations by 1850 had increased to \$200. Between 1852 and 1861, \$500 were given annually, then \$650, then \$900 and by 1865 there were \$950 annually appropriated. The custom recently has been to give some \$300 to each prison every year. In state institutions, on the whole, there has been more consistent and earnest attention given to the libraries than at any other institutions. Most of the state prisons at this date have a fairly well organized library and system of distribution, though the books are mostly out of date and the collections ill-balanced. The appearance of these libraries and the number of books on the shelves make a far more favorable impression on the casual onlooker, than a closer scrutiny would justify.

In the reformatories there have been varying standards. The best developed library in any penal or reformatory institution of the state is undoubtedly that of the Elmira Reformatory. The appropriations have been somewhat larger than in other institutions but that has simply been helpful. It does not account for its excellent organization. The school teacher has generally taken charge of the library and it is an organic part of the educational system of the institution. It is kept fairly up to date, the same methods being employed as in public libraries. In addition to the regular cataloguing, a classification based on the school requirements of the institution has been made and the system so devised that the inmate librarian is able to supply each pupil with the kind or type of books fitted for his grade in school. This includes not only text books and reference books but also fiction, travel, history, *etc.* It is always possible to select out of any type or subject, the books so written that they can be read by the corresponding group as classified in the school of letters.

The women's and children's reformatories have generally

organized their library work along the cottage classification. Each cottage is supplied with a number of books, so far as they are available, and, if possible, of the type that would be most useful to the inmates of the particular cottage. This system has some advantages, including that of a sense of proprietorship and the consequent better care of the books. But it lacks variety and is not conducive to an intensification of the habit of reading.

Least satisfactory in the matter of libraries has been the history of county jails and of the New York City institutions. The county jails have never had any libraries. From time to time the Prison Association would supply collections of books or magazines. A special effort of this kind was made in the sixties. Another fairly successful effort was made in the last three or four years through the Jail Library Committee members of which have supplied the books from their private resources. But it has never been possible to enlist the interest of sheriffs or jailers to a sufficient extent to make the collection of books thus supplied really valuable. The rate of loss has therefore been exceedingly high and the contributors have frequently been discouraged. The transitory nature of the position of the sheriff and the fact that prisoners themselves do not generally stay for long terms and that their treatment does not include any educational features accounts largely for this lack of interest in libraries. In the city prisons of New York the situation has been much the same. Donations of books and magazines through the chaplains have been irregular and the nature of the books not what librarians would approve of. No greater success is reported for the Penitentiary and the Workhouse. Intense efforts in the last few years to obtain the coöperation of the public library with the Department of Correction of New York City in obtaining a permanent supply of books and regular supervision and organization.

has been only moderately successful and seems to break down as soon as active outside coöperation is eliminated.

What prison authorities have largely failed to understand regarding libraries is, that they are not merely an educational factor or a means of recreation for the prisoners; the library is a very powerful aid for discipline; it supplies a reliable interest; it occupies the minds and time of the prisoners; and, by being another form of privilege the deprivation of which constitutes punishment, it gives the administration a further hold upon the prisoner. But books, libraries, and the like, have been generally speaking so foreign to the horizon of the so-called practical prison man that he has failed to see their real uses for discipline at the same time that he has failed to understand their value for education and rehabilitation.

CHAPTER XI

MANAGEMENT, CONTROL AND SUPERVISION

By the management of penal institutions we shall understand that person or body upon whom devolves the responsibility for the formulation of general policies, and with whom rests the final authority in the administration of the institution. The term will therefore include the sheriff, the almshouse commissioners in the City of New York, the Board of Inspectors of State Prisons, Boards of Managers of reformatories, *etc.* The term control of institutions will refer to the methods and procedure by which the community ascertains whether the general public policy in regard to its institutions is carried out and the efficiency and honesty with which they are conducted. By supervision we mean the more immediate and sustained means for acquainting the public with conditions in the institutions, and for educating, both institutions and the general public, as to proper standards of administration.

The relation of the management to the administration proper of an institution must be clearly borne in mind. The management is directly responsible to the organized representative of the community, that is of the state, city or county. It bears the entire and full responsibility for the entire administration of the institutions under its authority. The *administrative officers* of any institution are directly responsible to its *management* and through it indirectly to the community. For the *control* and regulation of the management of institutions the community devises independent means through other branches of its organization. The

supervision of institutions is entirely independent either of management or control and is exercised as a more direct expression of public solicitude than that obtained through its executive branches which manage or control and regulate.

MANAGEMENT

The progressive development of methods in the management of institutions has been less conspicuous in form, than real in fact and in spirit. The tendency in American institutions, political and governmental, has been often described as that of centralization of authority and concentration of responsibility. Both of these may be found in the management of penal institutions, though but to a moderate extent. Both have taken place more within single institutions or groups of institutions than in the entire correctional system of the state. Thus within the state prisons, for example, there has been a distinct and consistent tendency towards centralization and this trend has brought about some of the most important improvements in the administration of state prisons. But that centralization has not extended to the county jails and penitentiaries. In fact, both these principles of development more truly apply to administration proper than to the general management of institutions.

MANAGEMENT OF COUNTY JAILS

We may at the start eliminate from consideration one important group of institutions, namely, the county jail. The jail, from its earliest existence, has been both managed and administered by the sheriff with less interference by boards of supervisors than that exercised by the state legislature in respect to the state prisons. Boards of supervisors have been principally appropriating bodies and have affected the general policy of the county jail in comparatively unimportant respects only, as for example in relation to the cost and nature of the construction of new jails and in the occa-

sional introduction of new forms of labor. Otherwise the sheriff has been responsible for both policies and administration; both for standards proposed, and for the approximation to those standards in the administration.

PENITENTIARIES

County penitentiaries were organized by the boards of supervisors of their respective counties and have been managed through a board or committee appointed by the supervisors, and designated as the "inspectors" or "commissioners." Annual reports of the penitentiaries are submitted to the boards of supervisors by the "inspectors" who have generally taken a fairly active interest in the management of their institutions.

The Albany county penitentiary was to be managed by

three inspectors . . . appointed by the board of supervisors and the mayor and recorder (of Albany) in joint meeting assembled according to law, who shall have the supervision of the penitentiary; one of whom shall hold office for one year, one for two years, and one for three years from the first day of March next as shall be designated; and hereafter there shall be annually appointed in the same manner, one inspector who shall hold his office for three years from the first day of March then next ensuing. . . . It shall be the duty of the inspectors to visit the penitentiary jointly at least four times in each year, to examine and audit the accounts of the superintendent, to inquire into all matters connected with the government, discipline and police of the prison, the punishment and employment of the prisoners, and to make such rules and regulations as they may deem expedient and necessary, provided, however, that such rules and regulations shall not conflict with the laws of the State or with the general rules and regulations now adopted by this joint meeting. It shall be the duty of inspectors *individually* to visit the penitentiary once in each month or oftener as they deem necessary. . . . Each inspector shall keep

a journal of his visits and proceedings . . . the inspectors shall approve or appoint on the nomination of the superintendent, all the subordinate officers employed at the penitentiary, and shall fix their compensation. They shall also appoint a physician and chaplain . . . the inspectors shall annually . . . render a report to the board of supervisors and mayor and recorder . . . the inspectors shall receive no pecuniary compensation for their services whatever. It shall be an office of honor.¹

The Monroe County penitentiary started with four inspectors, one from each assembly district and one at large, to be appointed by the board of supervisors for a period of four years, one inspector to be appointed annually. They were to have no compensation and were to have the same duties as the inspectors in Albany county. Again we find a practically verbatim reproduction of their duties from the rules and regulations of the Albany penitentiary. The arrangement is much the same in Onondaga County and again a verbatim copy of the Albany rules is included in the rules and regulations, adopted in 1855. In Erie County these officers were called commissioners and were also three in number. The fact that the managing authorities of county penitentiaries have been continuous bodies, one member of the board being appointed or elected annually, has made possible a continuity of policy and interest which neither the county jails nor the state prisons have enjoyed. Such continuity is one of the essentials of successful management. It is hardly less important a desideratum than that the managing authorities be above suspicion, that they have no political interests, and that they be if possible persons of independent means.

¹ Rules and regulations, Albany penitentiary, adopted 1846, quoted by Dyer, *History of the Albany County Penitentiary*.

STATE PRISON 1796

The story of the changes in the management of the state prisons and of the New York City institutions goes back to the eighteenth century. The management of the first state prison was entrusted to a board of not more than seven inspectors to be appointed by the governor with the advice and consent of the "council of appointment." The inspectors were to meet at the prison at least once every month and oftener if necessary. The inspectors together with the justices of the supreme court or any two of them were given the power to make rules for the government of the convicts in the prison, not inconsistent with the laws and constitution of the state. The original Act provided for two prisons, one at New York and one at Albany, and there were, therefore, to be two managing bodies. But only one of the prisons was actually built and so only one board of inspectors existed until the establishment of the Auburn prison in 1816. For the latter a board of inspectors consisting of five members was provided. The Mt. Pleasant or Sing Sing prison established a few years later was entrusted to three inspectors. At the time of the revision of 1828 there were two boards of inspectors for the two prisons, at Auburn and Mt. Pleasant respectively. The Newgate prison had been abandoned when the Mt. Pleasant prison was opened. The revision of 1828 equalized, so far as possible, the duties and powers of the two separate boards of inspectors of the two State prisons. In their comment in connection with the section describing the duties of inspectors, the revisers state that the terms while new in part are "probably not an extension of the powers now possessed by the Auburn inspectors." The law of 1828 allowed an annual compensation to inspectors of a sum not exceeding \$300, which is extending the principle introduced in a law in 1813 but not

contained in the original act of 1796. In a note on the matter of compensation the revisers of 1828 remarked that "it exposes the State to too great hazard" to require from persons important duties without corresponding compensation. At first there were practically no restrictions on the activities of inspectors. But beginning with 1818 various limitations were introduced, mainly to prevent their having financial or material interests in the management of the prisons over which they were appointed.

The two boards of inspectors did uneven work, sometimes better at one prison than at the other. Beaumont and Toqueville reported the superintendence of the inspectors over the Sing Sing prison very superficial as compared with that at Auburn. Inspectors throughout the history of the prisons, have wielded supreme authority over their administration. But it is evident that they did not always live up to the requirements of their office. Occasionally their honesty has been questioned, more frequently their interest, and very generally their intelligence. Boards of inspectors, like other bodies, have varied in calibre, their membership sometimes composed of very indifferent persons, and occasionally including men of the highest excellence, such as Mr. (Senator) Hopkins and Judge Edmonds.

1847

The first important change in the management of the state prisons came with the law of 1847 which established a single board of inspectors consisting of three members for all the state prisons, including at this time Auburn, Sing Sing and the new Clinton prison. This change was regarded as a great improvement over the older system, in that it centralized the government of all the state prisons and located the responsibility somewhat more effectively. The new inspectors were not appointive like their predeces-

sors but were elected by popular vote. The general nature of their duties and powers was not changed. It was the first great step towards centralization of authority and of responsibility.

All the criticism that had been leveled at the inspectors under the earlier laws was, however, continued in full force after the change. There seem to have been three principal complaints against the system of management by inspectors: First, a lack of continuity or permanence; second, undue interference by politics and, third, insufficient powers held by inspectors. To these was added frequent dissatisfaction with the personnel of the Board and with the general standard of their work. Thus, for example, they failed in the frequency of visits to the prisons required by law, and were mostly absent during the infliction of corporal punishments.

POLITICS

That there was political interference with the appointment of inspectors before 1847 and with the appointment under them of the subordinate officers of the prison, after that date, was a perennial accusation. The change in the office of inspector from an appointive to an elective one, rather increased than decreased the effect of politics on prison administration. This evil must have been growing in seriousness for the censure of the prison system on this score appears to have increased with the progress of years and to have attained an especially intense pitch in the sixties. Referring to the popular election of inspectors the Prison Association says in 1865: "Thus our prisons are thrown into the political arena, and the mischief is not so much that improper men may be chosen as inspectors, but that coming into office as politicians they have political friends to reward or political opponents to eject; and this process, based on political considerations only and not at all on the ground of

qualification occurs every year." It is stated that "on one occasion a new inspector, on coming into office, insisted on having one-third of the appointments to office; and this privilege was accorded to him because it was conformable to the established practice of the inspectors. That made it necessary to remove some, then in office; and the principle adopted was to displace those who had been longest in office because they had longest enjoyed the patronage of the state; thus depriving the prisons of that experience which is absolutely indispensable to making a good officer."¹

An example was quoted where one of the chaplains was required by an inspector to travel two hundred miles from the prison to a city in the interior of the state for the purchase of his books, when he was only 35 miles from New York City—merely to patronize a book-dealer friend of the inspector. The effect of politics on prison management was one of the main points of attack by the special commission of 1866. Warden Pilsbury, who was held in the highest esteem by all prison men, testified before the commission, as follows:

(Question: "What do you conceive to be the effect of such a state of things on the discipline, prosperity and best interests of these institutions?")

Answer: "Baleful to the last degree. I think that the conversion of the State prisons into a part of the political machinery of the State, as is in effect done by our present constitution, is detrimental to their industrial and moral welfare, and that they are not as well managed, so far as the interests both of the State and the prisoners are concerned, as they were under the old system, when each prison had its own local board of inspectors, appointed by the governor and Senate. My opinion on this whole subject has been fully expressed in a communication to the Executive of the State, Governor Morgan, under date of March 13, 1852, which I herewith submit as my sworn

¹ *P. A.*, 1865, p. 60.

statement of the same, in the words following, to wit: 'The discipline at Auburn, in some respects, is better than it was twenty-five years ago. The Auburn prison ought to be the model for the whole country. With its extensive yard, surrounded by high stone walls, its costly, well arranged buildings for every use, its admirable dining hall, chapel and workshops, and with every facility for easy and corrective supervision, there ought to be no reason for defective discipline; but I do not believe there will ever be much improvement in the management of our prisons, while the Inspectors are elected (as they now are under the Constitution of the State) and so long as party politics controls and governs their operations. From my own experience, and from all that I have gathered of the experience of those who have made prison discipline and the management of prisons and prisoners the study of their lives, I think it may be set down as an established truth, that politics and prisons are incompatible with each other. Whether it regards pecuniary results or the moral training and reformation of the culprit, the bestowment of office as a prison keeper or director, on mere political or party considerations, will always end in disappointment and unsucces. There is an 'eternal fitness' in all things and successful men in the ordinary avocations of private life act entirely upon that principle. Were they to do otherwise, they could not succeed in their aims. For the right management of our prisons, both as regards the public and the convict, their direction must be entrusted to those who have aptitude and capacity for that peculiar position, independent of their political bearings or opinions. If prisons are ever to become reformatory and self-sustaining, their whole management and direction must be kept out of the arena of politics. As it now is, where the office of State prison inspector is elective and merged into the general political questions and machinery of the day, the people may once in a great while happen to stumble upon the 'right man' for the 'right place,' but it is much like a lottery in which the blanks immeasurably predominate.'

Warden Seymour testified before the same commission, that applications had been made to him and other prison officers for contributions for political purposes. Chaplain Luckey testified that even the office of teacher, yielding \$150 annually, was dependent upon political considerations. Warden Pilsbury went so far as to say that he regarded politics as the dominant and controlling power of prison administration in the state, and that the situation was almost entirely restricted to the state prison system, the county penitentiaries being managed on non-partisan basis. The testimony of Superintendent Fulton of the Monroe County penitentiary agreed with that of Warden Pilsbury. In both these penitentiaries the freedom from politics was undoubtedly due largely to the personality of their original superintendents, Pilsbury and Brockway, respectively. Ex-warden Hubbell of Sing Sing testified that the prisons were conducted "first in the interest of politicians, and, secondly, in that of contractors." In their final report the commission said in part: "Whenever the majority of the board is changed from one political party to another, it is the practice to remove nearly all the officers and to fill the vacancies with others who in most cases have no experience in prison management. . . ." They considered the influence of politics in prison administration so fatal that no improvement seemed to give any hope without a change in the general management.

One of the main objectives we have had in view in prosecuting the work confided to us [they say] has been to devise some means of divorcing, so far as may be practicable, our prisons from politics, and so of freeing them from this baleful and blighting influence. This divorce can be effected only by a change of constitutional provision.

The commission prepared a draft for the proposed constitutional amendment in the following terms:

There shall be a board of governors of prisons who shall have the charge and superintendence of the state prisons and power to appoint the wardens or principal keepers, the chaplains, clerks and physicians thereof, and the power of removing the officers above named and the other officers in the same; but such removal shall be for cause . . . said board shall also have the superintendence with power of visitation, of all institutions for the reformation of juvenile delinquents and the prevention of crime. It shall consist of five persons to be appointed by the governor . . . with the consent of the senate, who shall hold office ten years. . . . They shall receive such compensation as shall be established by law.

The legislature may confer such powers and impose such duties upon said board of governors in respect to the county jails, local or district penitentiaries and other penal institutions within the state as shall be deemed expedient.

The proposal of the committee was approved by the executive committee of the Prison Association and signed, among others, by Theodore W. Dwight, E. C. Wines, Francis Lieber, and ex-warden Gaylord B. Hubbell. The important features of this proposal were, first, the long terms of office of the members of the board, and, secondly, the extension of their authority over juvenile reformatories and possibly local penal institutions.¹ The centralization of management contemplated in this proposed constitutional amendment has never gone beyond the stage of proposal. It still does not exist. The proposed amendment was included in the constitution submitted to the people in 1867 but was defeated together with the other amendments proposed. The matter continued to be discussed for some time and the wording was revised and perfected from time to time. No change took

¹ The extension to local penal institutions had been attempted in the law of 1847, which required the board of inspectors created by that law to inspect and report upon the county jails. That provision was repealed in the following year.

place, however, until 1876 when the board of inspectors was abolished by constitutional amendment and the present management provided with a superintendent of prisons for the entire state prison system.

CONSTITUTIONAL AMENDMENT 1876—SUPERINTENDENT OF PRISONS

The superintendent is to be appointed by the governor with the consent of the senate and is to hold office for five years. He has the full power of appointing the agent and warden and the physicians and chaplains of each prison. The warden in turn appoints all other officers except the clerk, who is subject to approval by the superintendent and one other clerk who is appointed by the state comptroller. This last change in management brings to its present form the two features of development; one the centralization of authority, and the other the concentration of responsibility in one individual. The superintendent of prisons has practically unlimited power but also corresponding responsibilities. The present system is unquestionably far superior to government by boards of inspectors. It has not, however, eliminated politics. Great as has been the improvement when compared with previous conditions, the political influence has been simply centralized instead of remaining local. Political considerations still control the appointment of wardens. But now the superintendent takes his orders from the governor instead of from a local political group. Subordinate officers, however, are appointed under civil service regulations and are largely independent of political influence. Thus the most insidious aspect of politics, that which affected the appointment of subordinate officers, has been successfully eliminated.

At this date the worst evils of the prison system, namely, contract labor and politics, have been eliminated in the rough.

But in the constructive phases of management, the entire system including inspectors and superintendent has been a failure. Neither the abolition of contract labor nor the introduction of civil service; neither the introduction of the indeterminate sentence nor the acceptance of advanced penological principles in the state prisons may be attributed to its managing authorities. They have come, with rare exceptions, from the outside or, occasionally, from executive officers. Moreover, such developments as have taken place are confined at best to the state prison system; they do not extend to the entire correctional problem of the state.

NEW YORK CITY

In the government of the institutions of the City of New York there has been strictly speaking no progress towards centralization. The workhouse, then the Bridewell, later the Penitentiary and other prisons established in New York City were simply further units added to the list of institutions already controlled by the department of public charities, by whatever name known. Almshouse commissioners, commissioners of the department of public charities and correction, board of governors, were simply different appellations, and to some extent different forms of organization of the managing authority for a large and increasing number of institutions. A real development in the city's system took place when in 1897 the penal institutions were entirely separated from the eleemosynary group and constituted into a new department called the Department of Correction. The management of this new department was entrusted to a single individual designated the Commissioner of Correction. A concentration of responsibility does exist in the City institutions, for the final authority now rests not with the immediate executive head of each prison but with the commissioner of the department. Some of the functions of the

executive heads were reduced, and transferred to this central officer who became in one person the managing body and the general executive. No such record of incompetence and failure is presented in the history of the New York City institutions as in the state prisons. This however may be due in part at least not to greater success, but to less public attention and less complete records. Such glimpses as we have, from time to time, would indicate that there was no greater excellence in the management of the city institutions than in those of the state. Unspeakable physical conditions, sustained idleness, administrative inefficiency, friction among officers, local tangles, inequalities of appointment occurred, and were allowed to continue. Occasionally conditions became bad enough to cause a general upheaval. Such was the case about 1834 resulting in a great "shake-up" and again in 1849 resulting in the law that created a new (and ephemeral) system of management by a board of ten governors. Of all types of management of penal institutions in this state the present system in New York City, established in 1897, is probably the best. It combines the advantages of centralized business control and of concentrated responsibility. What it lacks is mainly the local interest of the kind represented by boards of managers. But this is largely compensated by the active interest of specialized organizations and by the presence of an ever-ready public press. While the history of the changes in the management of state prisons is due to very clear factors operating slowly during a long number of years, in the City of New York changes are probably more incidental to the general development of municipal administration.

REFORMATORIES

The form of management in reformatories is due to their origin in private organizations. The House of Refuge

was established by a private society and was the only reformatory for many years. When the Elmira Reformatory was contemplated there had been in existence models of management in juvenile reformatories and in private reformatories for women. The fact that the financial support of the House of Refuge was provided by the state did not seem to affect the type of management.

The advantages of management by a board of managers are divers. First, it assures continuity of policy by the gradual successive replacement of individual members as their terms expire. Secondly, by locating the power of appointing a superintendent in a body independent of political control, the elimination of politics is made at least possible. Thirdly, the individual interest of members of the board of managers is enlisted and this gives the institution great power in resisting unwarranted attacks. The earlier attempts at the introduction of this form of management were due not to the recognition of its advantages but to the fact that the institutions established were organized by private societies so that the management consisted at first simply of the society itself. This was true of the House of Refuge and the Magdalen Home; it is true of the Prison Association which was empowered by law to establish a workhouse; it was true of the juvenile institutions. The adoption of the system for the Elmira Reformatory very likely represents a definite recognition of its advantages. It may also have been influenced in part by the long-standing custom of appointing commissions for the building and establishment of institutions.

All reformatories except the New York City Reformatory for Misdemeanants are now under boards of managers, appointed, in the case of state institutions, by the governor, with the advice and consent of the senate. Of recent years the suggestion has been frequently made to introduce the

system into the state prison department as well; not to abolish the superintendent, who would remain the administrative head, but to supplement him by the appointment of an advisory board for the department as a whole, and of a board of managers for each separate institution. The plan has much to commend it and will probably continue to win favor.

BOARDS OF MANAGERS

Management by boards of managers has itself undergone some changes and developments more for the purpose of better control by the state than for increased efficiency within. The organization of boards constituting private societies has not been interfered with. The managers of the House of Refuge, of the Magdalen Home (now Inwood House), and other private organizations elect their officers, appoint their committees and assign duties to the various committees undisturbed. Boards of managers of public institutions are regulated by general laws which designate the number and sex of its members. In the state reformatories for women the members were five in number. The law of 1908 which provided a uniform system for all institutions of that group established seven as the number of members. Occasionally exceptions were made by special laws, as for example the recent increase to fifteen members for the State Agricultural and Industrial School, a change due largely to politics and sect differences. The obligations, duties and powers of managers are provided in the general charities law constituting one of the chapters of the consolidated laws.

The calibre of the boards of managers has not been always of a high grade. Occasionally they are reported to have taken undue advantage of their positions for private gain or social advantages. Some rather unsavory instances of this nature have been recorded.

On the whole it is fair to say that the management of institutions by boards of managers has thus far proved to be the safest and most effective means for single institutions, and that probably some modified form of that system may have to be sooner or later adopted for the state prisons as well, and possibly even for the local institutions, but always preferably with centralized control of the administration proper, as in the City of New York.

CONTROL

It is part of our governmental system to provide checks and balances by which one branch or department of the government, while not superior to the other, is nevertheless able in certain respects to control its work. In the conduct of our prisons we did not at first provide for a full supply of such checks and balances, and have depended until quite recently upon other means of control.

ANNUAL REPORTS

A number of different ways have been tried from time to time, almost always representing the legislative body either state or local. The most general and least satisfactory method of control has been by annual reports. Such reports are absolutely necessary and should, of course, be rendered by every institution. But as the principal means of control it has proved futile. As one of the commissioners in the "sixties" remarked, the board of inspectors of the state prisons had never been known to report its own shortcomings or failures. Such reports, therefore, while valuable in other respects, have never represented a very adequate means of control.

COMMITTEES AND COMMISSIONS OF THE LEGISLATURE

The next in frequency has been control by committees or commissions. If one were to count the legislative and other

bodies appointed from time to time for investigating either the entire system or some special institution or evil, one would certainly find at least an average of one a year, and more likely a greater number. In fact it may be said that the most powerful control has been exercised by this least continuous method. A committee or commission would look upon itself as the only one of its kind; attempt to perform its work with little or no reference to its predecessors, and make its recommendations without regard either to the specific recommendations of previous commissions, accepted or rejected, or to the general policies implied in those recommendations. These bodies, then, have been only slightly policy-making. The control they have exercised has been as much through the fear of subsequent publicity as through the expectation of specific changes that might result. In respect to specific results most of them may be considered to have been failures. They have been able to placate agitation, to mollify opposition, and to vindicate the dignity of the legislature as the all-powerful arbiter.

A few of the commissions have made valuable contributions. Among these should be mentioned first the commission appointed in 1820 with Senator Samuel H. Hopkins as chairman. This commission performed a scholarly piece of work in tracing the history of the success and failure of the state prison up to their appointment, analyzing its difficulties and proposing constructive recommendations, some of them of great excellence. Among these recommendations may be mentioned the simplification of the penal code and penal system, by which a three-fold classification based on the seriousness of crime would be followed by a three-fold general classification of punishment without the specific prescription of petty details of years and months of imprisonment. One of the most important of their recommendations in respect to the control of prisons which, however, was not

accepted, related to the advisability of requiring an annual inspection of both state prisons (New York and Auburn) by committees of the legislature. While such inspections and investigations may have averaged more than one annually they did not constitute part of a continuous, rational process. Mention should be made also of the commission of 1834 which dealt with the prison labor problem and was the first of the many commissions to present a constructive policy in respect to prison industries.

The next important general commission was the one of 1852 appointed perhaps as a result of the controversy between the Prison Association and the inspectors of the State Prisons, arising from the inspection work of the former. After the organization of the Prison Association legislative committees were for a while affected by the work of that organization, and the two most constructive commissions, that of 1866 and that of 1870 were not only appointed as the result of its activities, but included prominent members of that association in their personnel. Another important commission was that of 1905 designated as the State Prison Improvement Commission, appointed by chapter 718 of the laws of 1905. They were assigned the task of inquiring

first as to the structural and sanitary conditions of the buildings at Auburn and Sing Sing Prisons; second as to the advisability and cost of reconstructing and modernizing such buildings; third as to the possibility and cost of providing two new prison plants on new sites, the most advantageous locations of such sites and the required capacity of each plant; fourth as to the advisability and cost of providing one new prison for 2400 prisoners on a new site, and the most advantageous location of such site; fifth the estimated sums that can be realized from the sale of Auburn and Sing Sing Prisons and the lands and appurtenances connected therewith; sixth, the most practical disposition that may be made of the Eastern New York Reformatory.

Control of this nature, that is, by legislative committees and commissions, is the most characteristic of our system. It is the oldest and also the one most common at this date.

CONTROL BY STATE OFFICIALS *etc.*

Other forms of control have been exercised through various departments of the state government. Of these the comptroller has been perhaps the most important. His findings in 1873 and 1875 contributed as much as anything else to the success of the constitutional amendment creating the office of state superintendent of prisons. That amendment, recognizing the valuable services of the comptroller's department, included a provision requiring the comptroller to appoint a representative in each one of the state prisons. According to law all payments from appropriations have to be made through the comptroller and he has therefore, by reason of his duty of ascertaining the propriety and legality of all expenditures, acted as an automatic check. The fiscal supervisor of state charities has to an even greater degree, in fact to perhaps a menacing extent, acted as a control in respect to the reformatories for women and children. His powers over the expenditures of these institutions have rendered him practically, though without specific legal authority, a policy-maker for those institutions.¹

These two officials have constituted the most consistent and continuous form of control undergone by any of the state institutions. In New York City the appropriating bodies, namely, the Board of Estimate and Apportionment and the Board of Aldermen, have directly and through some of the other departments exercised a fairly active control in recent years. This has been supplemented by the increasing efficiency of the work of the city comptroller's office and by the commissioner of accounts. Prior to this

¹ "Strong" Report on State Charities, 1916.

form of organization in the city, the only control rested in the same kind of sporadic investigation by the legislative and appropriating authorities as in the case of the State. County institutions, that is, the jail and penitentiary, have had no form of control outside of the representatives of the boards of supervisors.

GOVERNOR, MAYOR, GRAND JURY

Direct control through the chief executive has been comparatively rare. Neither the governor in the state, nor the mayor in New York City (other mayors have no executive control over penal institutions) has generally taken an independent stand in this respect, but has been content to call such conditions as he may have learned about to the attention of the respective legislative bodies. In respect to the women's and children's reformatories, the State Board of Charities has exercised a weak form of control since its inclusion in the constitution in 1895. Just what powers of control it has is not quite clear, but it has never exercised them to the full.

One other form of control should be mentioned. It has generally been exceedingly weak but was occasionally serviceable in supplying the necessary material for publicity when other bodies were ready to act. We refer to the grand jury. Occasionally their services have been very valuable but always as an instrumentality used by other agencies. One of the most noteworthy examples was its utilization by Judge Edmonds in 1848, when, releasing them from their regular duties, he directed the grand jury to make an immediate investigation of the prisons of the City. Their investigation made available, in the most useful form, the facts that led to the reorganization of the department of charities of the city under a board of governors as previously recommended by some of the civic bodies of the city.

It is difficult to pass judgment as to the general methods of public control above briefly referred to. It seems to be part of the very woof and warp of our form of government and must be accepted as fact.

SUPERVISION OR INSPECTION

The development of public supervision or inspection of institutions can also be understood only with reference to the general political philosophy of the Anglo-Saxon State. It assumes an amount of initiative on the part of the individual citizen, sufficient for the correction of ordinary abuses and for the introduction of improved means when the occasion arises. As the complexity of social organization, and the number of institutions increases, more active means are gradually introduced and individual initiative is less and less depended upon. A kind of potential supervision, sanctioned by tradition, was within the powers of the justice of the peace who in fact, for a considerable period, was burdened with the duty of providing the local jail and raising the necessary money for its construction. Similarly, the traditional duties of the minister of the gospel to visit prisons and aid its inmates, rendered him in a sense a representative of the public, with at least the opportunity if not the duty or power to inspect prisons. Influential citizens of any locality would, from time to time, take a certain amount of interest in the local jail. Occasionally, also, the local press, if such existed, exercised some supervision. It does not appear that any of these more or less informal means of supervision were ever exercised to any noteworthy extent.

1796

What appears to have been the first specific provision for supervision was included in the law of 1796, establishing the state prison: "No person whatever except the keeper, assistant keeper or servants, the said inspectors, officers and

ministers of justice, minister of the gospel or persons producing a written license signed by two of the inspectors shall be permitted to enter within the walls where such offender shall be confined." This definitely gives power of inspection to justices of the supreme court and to ministers of the gospel.

1828

The law of 1828 provided for the inspection both of state prisons and of county prisons. As to state prisons, the following officers were permitted to visit at pleasure: the governor, the lieutenant governor, the legislators, the chancellor, judges of the supreme court, the attorney general, circuit judges, district attorneys, and ministers of the gospel of local congregations.¹ In respect to county jails, the following provisions were introduced:² First, it was made the duty of the judges of each county court to see that there were sufficient jails for the purposes of the county. This provision was in conformity with the principle of the first revision in 1813 which authorized judges to direct the construction of solitary cells in county jails. The law further authorized and directed judges of county courts, except in New York City, to examine within one year of the passage of the law the county jails of their counties to ascertain whether there was enough room for the prisoners so as to keep separate court prisoners and prisoners serving sentence; after such examination they were to report to the Board of Supervisors of their respective counties who then might proceed to act in their discretion.

REGULAR INSPECTION OF COUNTY JAILS PROVIDED, 1828

Another section of the same law designated the first judge of the county court and the county superintendent

¹ R. S., 1828, part 4, chapter 3, title 2, article 2, section 64.

² Part 4, chapter 3, title 1, article 1, section 2, and article 2, sections 21, 22, 23, 24 and 25.

of the poor as inspectors for county prisons. These officers were given power to examine the jails from time to time and to inquire into "all matters connected with the government, discipline and police of such prisons." It was made their duty to visit the jails once every January and July, to report their findings in detail to the next court of Oyer and Terminer, to state the condition and number of convicts confined during the preceding six months, the causes of their arrest, their employment, the number of prisoners per room, their classification, and violations of the law if they found any. It was made the duty of keepers to admit these officers acting as inspectors and to present to the court the name of every prisoner, the cause of his detention and the length of his confinement. Here we find the first explicit provision for inspection, exceedingly localized, but with sufficient power to satisfy all needs of inspection. No power was given, however, to correct any evils. The period between 1828 and 1844 does not show that the inspection by either of these officers had been regularly carried on anywhere in the State. It was, on the contrary, reported again and again, that no such inspections had been made. These officers may, therefore, still be included among the potential means of supervision rather than among the active ones.

PRISON ASSOCIATION, 1844

The first organized body for regular supervision of penal institutions, while local in origin, immediately accepted the whole state as its field. To local inspectors as provided in the law of 1828 and as represented by press, citizens and managing authorities, there was now added a state-wide body organized for that specific purpose and actuated by interests that were permanent. In 1844 the Prison Association of New York was organized. It continued to be the only inspecting body until 1867 when the State Board of

Charities was created by law. This latter body, however, did not concern itself with penal institutions other than reformatories so that there was no state inspecting authority for the latter until 1896 when the Prison Commission was created. During the period from 1844 to 1896, or for more than a half century, the Prison Association was the only inspecting body in the state for penal institutions. It has continued its activities to the present and has been, possibly, the greatest force for prison improvement in the state. Its organization was due to conditions among discharged prisoners. It was brought about by the efforts of the president of the board of inspectors of the Sing Sing Prison, later justice of the Supreme Court, John W. Edmonds, one of the sincerest and most humane men in public life in New York at the time. As president of the Sing Sing Board of Inspectors he was thoroughly acquainted with conditions in the prisons and of discharged prisoners. On the 23d of November, 1844, he sent out the following announcement :

The undersigned has been directed by the board of inspectors of the State Prison at Sing Sing to invite the attention of the benevolent to the destitute condition of discharged convicts.

It is of frequent occurrence that prisoners afford satisfactory evidence of sincere and earnest desire to reform; yet when they go forth into the world they are often, for want of employment, reduced to great distress and subjected to sore temptations. To starve or steal, is too often the only alternative presented to them.

The power of inspectors to afford relief in such cases, is confined by law, to the mere pittance of three dollars to each person.

But believing that very many can be saved from a return to their former evil practices, by timely aid, that not a few can be retained in the path of reform by encouragement and

support judiciously applied, the inspectors have directed me to appeal to the benevolent in this city to render their aid by forming a society similar to those which now exist in many parts of Europe, whose object shall be to find employment for those who shall give evidence of repentance and reformation.

JOHN W. EDMONDS, *President Board of Inspectors.*

The appeal was immediately taken up by a number of prominent men. A meeting was called for the sixth of December, at which most interesting papers were read, describing conditions in prisons and of prisoners after discharge. Both the state and the New York City institutions were described. The meeting adopted a resolution for the organization of a prison association. While the impulse leading to its organization was clearly philanthropic in the simple sense of the word, the calibre of the men who organized it and became its officers, including the vice chancellor of New York, professors, judges, district attorneys, bankers, lawyers, physicians and merchants, indicated that something more than mere relief of discharged prisoners would be undertaken. The objects of the society were immediately set forth as follows:

First the amelioration of the condition of prisoners whether detained for trial or finally convicted or as witnesses. Second, the improvement of prison discipline and the government of prisons whether for cities, counties or state. Third, the support and encouragement of reformed convicts after their discharge, by affording them the means of obtaining an honest livelihood and sustaining them in their efforts of reform.

Several committees were appointed for these various purposes and the work was entered upon with admirable earnestness. It soon became clear that their efforts especially in the direction of the improvement of prison discipline would be futile if they depended for admission to the prisons upon

the good will of the keepers. They sought, therefore, and succeeded in obtaining legal authority which was granted them in the incorporation of the society in 1846.¹ The law provided that

The said executive committee, by such committees as they shall from time to time appoint, shall have power, and it shall be their duty, to visit, inspect, and examine, all the prisons in the state, and annually report to the legislature their state and condition and all such other things in regard to them as may enable the legislature to perfect their government and discipline. And to enable them to execute the powers and perform the duties hereby granted and imposed, they shall possess all the powers and authority that by the twenty-fourth section of title first, chapter third, part fourth of the Revised Statutes, are vested in the inspectors of county prisons; and the duties of the keepers of each prison that they may examine shall be the same in relation to them as in the section aforesaid are imposed on the keepers of such prisons in relation to the inspectors thereof; *provided* that no such examination or inspection of any prison shall be made until an order for that purpose to be granted by the chancellor of this State, or one of the judges of the supreme court or by a vice chancellor or circuit judge, or by the first judge of the county in which the prison to be examined shall be situate, shall first have been had and obtained, which order shall specify the name of the prison to be examined, the names of the persons members of the said association by whom the examination is to be made and the time within which the same must be concluded.

They were further given the power to organize and erect a workhouse in the City of New York and to conduct such an institution in much the same way as the society for the reformation of juvenile delinquents was conducting the House of Refuge. The latter power was never actually

¹ Chapter 163, laws of 1846, passed May 9.

used by the association but aided them in making their drive for the establishment of the New York City Workhouse which was organized as a result of their efforts, supported by the Association for the Improvement of the Condition of the Poor in 1849. The first few years of the work of the Prison Association fully established both the necessity for such an organization and the excellence of their work. Their reports are the best source of information for all aspects of prison reform during the whole period since 1844. The association was not able to make full inspections of all institutions every year. There were fluctuations in the amount and quality of the work and occasionally financial straits also rendered their work more difficult. For a period of time the association was subsidized by both state and city governments. Frequently, the state called upon it for investigations and inspections without making appropriations therefor. The organization has been an excellent example of the delegation of state powers and duties to private corporations.

One of the weakest spots in the institutional administration found by the association was the system of record keeping. There were very poor, if any, records kept in the county institutions. In 1846 the Prison Association sent out blank forms for the entry of statistical and other information and suggested that the legislature make the rendering of such reports mandatory upon the local institutions. It was as a result of this move that the records required by the law of 1847 were enacted in law. In its course of inspection in 1846 the Prison Association found that the county supervising or inspecting authorities referred to above, had utterly failed to do their duty. In standardizing their inspections the association adopted as their model a system practiced for some years in England, but they were hampered in applying the method by the very

poor institutional records. In the second year of their organization, in 1845, the committee on prison discipline of the Association inspected eight county jails. They found they were regarded with jealousy and fear, and received little cooperation. By 1847 the Association had made itself sufficiently felt to arouse opposition, so that attempts were made to cancel their legal powers. For a considerable time the Association had to withstand attacks more or less violent and to justify their existence before the public. In 1847 they showed that they had discovered tainted fish supplied by dishonest contractors; substitution of mutton for beef and pork and other poor foods at high prices, also by contractors, with the connivance of prison officials. They laid particular stress upon the uncovering of cruelty, dishonesty and poor physical conditions in prisons. Later they extended their interests to principles of prison discipline, to matters of architecture, routine, management, *etc.*

Through certain members of the executive committee, the Association was responsible for the revision of the prison laws which were enacted in 1847. They included in these the requirement, that the board of inspectors for state prisons, newly created by the law of 1847, be assigned the inspection of the county jails throughout the state. This attempt on their part to create a responsible state inspecting body was nullified in the following year by the repeal of that section of the law.

In 1848 their incisive inspections aroused the bitter opposition of the board of inspectors of state prisons. This resulted in a serious controversy that lasted for a number of years, and prevented the continuance of the inspection of state prisons. The controversy made it possible for the Association to bring clearly before the public the necessity of public inspection. The specious arguments and half-honest allegations of the inspectors during the controversy

called forth a letter from Judge Edmonds, Justice of the Supreme Court, formerly president of the Board of Inspectors and at the time, member of the Executive Committee of the Prison Association. His attitude was of special importance because of his former official connection with the prison, his judicial office and his reputation as a public-spirited man. The following quotation contains the greater part of his letter and gives in unexcelled terms, the merits of organized inspection.

The substance of the complaint made by the inspectors in their report and by Mr. Wells in his letter to me is, that the Association have received and published to the world statements made by discharged convicts, of mal-conduct in the officers of the State Prison at Sing Sing, which the inspectors say, if true, ought to subject those officers to fine and imprisonment.

How far the Association is justified in publishing such statements, is the question presented by these complaints.

The Association was formed in 1844, and it had three objects in view. . . .

For these purposes application was made to the Legislature. Messrs. B. F. Butler, Theodore Sedgwick, I. Hopper and I attended at Albany and explained our objects, not only to the committees of the Legislature, but at a public meeting held in the Assembly Chamber, and attended by many of the members and a large concourse of other persons.

So far as the visitation of prisons was concerned, all we asked was the same privilege "to visit the respective prisons at pleasure," which was by law given to Circuit Judges, District Attorneys, Ministers of the gospel having charge of congregations in the town where the prisons were, and others.

The Legislature, however, without our solicitation, went much further. . . . [quotes law] . . . But I may be pardoned for saying, with some exultation, that the few inspections which the Association has been permitted to make have been attended with the happiest effects, in exposing mal-conduct, in restrain-

ing the officers within proper bounds, in conveying to the Legislature and the public valuable information in regard to institutions which otherwise are sealed books to the general eye, and in restoring to society many a fallen and erring fellow creature. And I may also be allowed to utter the regret with which I have witnessed the manner in which its efforts have often been thwarted by those who have for the time been clothed with public authority.

One of the most valuable features attending the inspections by the Association and it is one which *never* attends the inspections of the public officers, is the personal examination of each prisoner, which the Association always exacted of its committees of examination. It is exceedingly difficult to convey an adequate idea of the irksomeness and pain of executing this task in such a manner as not to interfere with the discipline or the labor of the prisons. I have, myself, stood day after day, for hours at a time, at the doors of the cells of prisoners, listening to the details of human depravity and human suffering, until the sickness of the heart was even more intolerable than the weariness of the body. Still it was a duty which our experience told us ought not to be omitted, and which our Association rigidly exacted from those upon whom they devolved the duty of examination.

We found a universal law prevailing among the officers of the prisoners, that the word of a prisoner must not be taken for anything. Yet we found those officers taking it every day, and in all the affairs of the prisons; we found that the law had made their testimony good in certain cases even when in prison; we found the Governor often pardoning them that they might be witnesses; and we found that from their statements we often obtained clues to abuses, which enabled us to trace them out and ascertained their existence by irrefragible testimony.

We found more. We found that it was absolutely necessary that we should obtain their statements, because to the world at large all within the walls was darkness and secrecy, and from that source no testimony could be obtained, and from the officers, we could not easily procure the knowledge of their own misconduct.

How easy it is for the officers to conceal their own conduct was exemplified to me when I was an Inspector at Sing Sing.

I was astonished and worried by frequent complaints of the prisoners that they did not get enough to eat, and I gave peremptory orders that they should have enough. I directed the assistant keepers to send their men to the kitchen whenever they complained. One of them, who saw that one of his best workmen could not do a day's labor from weakness, sent him to the kitchen in vain. He went himself and could get no food for his man. He then complained to the principal keeper. That officer, when he found out who it was that complained, beat him over the head with the hardwood handle of a stone hammer and when that flew out of his hands, from his own violence, attacked him with a stone axe and would have struck him with it in his passion if he had not been prevented. The poor convict was then tied up and whipped with some fifty lashes of the cat and ended the incident by some two weeks confinement in the hospital, and all for having complained of being hungry.

Although I was frequently at the prison and gave to its affairs as close inspection as any Inspector ever had done, months elapsed before this outrage was made known to me; and it was not until a committee of the Legislature was sent down to investigate the affairs of the prison, that I learned that the keeper had been in the habit of subduing by starvation the prisoners of whom he was afraid.

It was so easy for the officers to conceal even from me, with all my attention and vigilance, their abuses of authority and wanton cruelty.

Hence the wisdom and propriety of receiving the statements of prisoners though receiving them cautiously and with many allowances; and hence the rules of the Association, upon which they acted while they were allowed the opportunity of investigating them, to receive them but never to give them to the world unless supported by other and satisfactory evidence.

The aid which the Association was disposed to give to discharged convicts brought to their office many such persons, and their statements were listened to as a matter of duty. Its

officers were prohibited by the conduct of the Inspectors from investigating the truth of those statements. They were made by different persons at different times, and under circumstances which precluded the idea of pre-concert. They worked conviction in the minds of the officers of the Association. What should they do?

I cannot for a moment entertain a doubt that it was the duty of the Association under its act of incorporation, to communicate to the Legislature the information it obtained, and I cannot but feel that it would have been wanting in its duty if it had omitted to do so.

If all is right in the government of the prisons, their officers have nothing to fear from the investigations of candid and dispassionate men. If matters are wrong there, the Association cannot without a dereliction of duty, refrain from speaking the truth in soberness and sincerity.

At every change of parties, men are to be thrust in or out of their government, not according to their fitness for the station, but according to their party attachments; and the Inspectors, though called men, are in fact governors of the institutions, clothed with the patronage of appointment and the absolute power of government. Over their department there is no supervision, except that which is conferred by the Legislature on this Association, or that which may from time to time be exercised by legislative committees.

I am, very respectfully, etc.,

J. W. EDMONDS.

The legislative committee of 1852 gave credit to the work of the Prison Association and deplored that it had not done more. The Association claimed lack of resources as the cause for its limited amount of inspection. In some years only a few jails were visited and not all of the state prisons. About 1861, for the first time, the Association was able to inspect all the penal institutions of the state within the year. In the "sixties" their work of inspection was supplemented

by the organization of local committees in the different counties which accepted the obligation of periodically visiting their local jail and of reporting conditions to the Association making their reports conform to the general standard set for them. Excellent material was obtained in this way, and to the advantages of centralized supervision were added those of local interest which always gives such central supervision the necessary "punch."

The Association made it its special task, beginning with the "sixties," to work for the abolition of contract labor. It succeeded in bringing forth the most important facts relating to that system, and through the commissions of 1866 and 1870, for which the Association was largely responsible, it provided the ammunition with the aid of which the efforts of free labor were at last successful in abolishing contract labor. Among the recommendations of the commission of 1866¹ was the establishment of a central supervising authority. Despite the fact that at this time the inspection work of the Prison Association was extended and improved, they still felt that a state organization of that nature was necessary. At length in 1895 the state Constitution was amended and a new body created, to be called the Prison Commission.

PRISON COMMISSION

The constitution directed that the legislature "shall" provide for such a prison commission. In 1896 the prison commission was created by Act of law.² The commission was to consist of eight members, was given power of inspection and the means of enforcement of their recommendations through orders by a supreme court justice. It was empowered, further, to issue processes for the attendance of

¹ *P. A.*, 1866, p. 343.

² Chap. 1026, laws 1895.

witnesses, to administer oaths, *etc.* The commissioners were to serve without compensation except ten dollars a day for days of service, and their expenses.

In 1901 the Prison Commission was changed to a body of three members, with the former president, Mr. Lispenard Stewart, remaining, and two new members. At this time they were given the additional power formerly held by the commissioners of paroled prisoners. At the same time the president of the commission was given a salary of \$2500. per annum. In 1907 a further reorganization took place by chapter 381 of the laws of that year. Under this law, which is still in effect, the commission consists of seven members, none of them salaried, but entitled to ten dollars a day when actually performing their duties as commissioners, and their travelling expenses. By simplifying the method of enforcing the orders of the commission, the law increased their powers without actually adding any new ones. It authorized the employment by the commission of a secretary, inspectors and clerks. The commission did not regard favorably the assignment to them of the powers of the commissioners of parole, and in the same year, 1907, these powers were withdrawn and given to a separate body designated the Board of Parole for State Prisons.

The creation of the Prison Commission has been by far the most important improvement in the general prison system, and particularly in the field of supervision, in the last quarter of a century. It is proper that the state should have its own agency for that purpose instead of depending entirely upon the Prison Association, which though possessing public powers, is controlled and managed entirely by a private group responsible to no public authority. The State Board of Charities had never been given power over penal institutions excepting reformatories for women and children. The record of the prison commission since its organization

is one of which it may well be proud, especially during the first few years after its creation. Among its recommendations in 1895 were the following:

1. To abolish the use of the prisons of New York for confinement of Federal prisoners.
2. To repeal laws permitting the sentencing of prisoners to the county penitentiaries for more than one year.
3. To revise the general prison system and the laws relating to them and to render the use of prison-made goods mandatory upon public institutions.
4. Authorization for the extensive employment of prisoners on highway construction.

The commission also began, within the first year of its activities, to collect prison statistics. In the second year of its existence the commission caused the introduction of a number of bills containing the recommendations of their previous year. They were successful in several of these, including the prohibition of commitment of felons to penitentiaries for more than one year;¹ the commitment of women prisoners of over sixteen years on sentences to more than one year to the Auburn State prison;² the provision for employment of county jail prisoners in repairing and construction of buildings, institutions, and highways, and for raising of money for that purpose;³ and discontinuing the use of county penitentiaries for the confinement of Federal prisoners sentenced from outside of New York. The commission continued to study the general prison situation with care and intelligence, and to make recommendations for necessary legislation. Some of the more interesting of these recommendations relate to the introduction of

¹ Chapter 553 of the laws of 1896.

² Chapter 374, laws of 1896.

³ Chapter 826, laws 1896, amending section 93 of the county law contained in chapter 686 of the laws of 1892.

compulsory education for illiterate prisoners in the state prisons, the extension of parole to state prisons, the suggestion that prisoners be permitted to write periodical letters to state officials, *etc.* In 1899 we find them recommending for the first time the establishment of a reformatory for male misdemeanants. About 1900 the commission became especially interested in the question of intoxication and made several recommendations regarding it.

In 1906, almost eleven years after the creation of the commission, they asked, for the first time, for the appointment of an inspector in order to supplement the inspection work theretofore performed entirely by members of the commission. They insisted also on greater powers for the enforcement of their recommendations. In the same year they recommended the adoption of a general system of state district workhouses to take the place of the county penitentiaries, thus resuming, although but weakly, the agitation begun more than sixty years earlier by the Prison Association and suspended at the time because of the organization of the county penitentiaries. In 1907-8 the commission took special pains to work out a rational system for dealing with vagrants and inebriates so as to reduce the number of arrests, preferably by increasing the terms of sentence. They continued their interest and recommendations for the establishment of new institutions for misdemeanants. In 1907 they began a series of reports by a sub-committee on industries, which sought to create a more reasonable market and a better system of production for prison labor.

In 1912 a long series of recommendations shows the scope of the commission's interest. These recommendations relate to the following subjects:

1. Remodeling or abolition of the Sing Sing Prison.
2. Appropriation requested for a reformatory for misdemeanants.

3. Additional cottages for the Bedford Reformatory.
4. Appropriations requested for Tramp Colony.
5. Recommendations for the establishment of State District workhouses.
6. Request for provision for the feeble-minded (this is the first time this subject appears in their official publication).
7. Request for appropriation for the further equipment of the State Farm for Women.
8. Suggestion that the probation commission be assigned the duty of supervising work of parole officers.
9. Suggestion for the unification of probation.
10. Recommendation that it be made mandatory to commit men between sixteen and twenty-one in New York City to the Reformatory for Misdemeanants.
11. To make possible appeal from inferior courts to county courts.
12. Empower police and magistrates to accept cash bail.
13. Permit the waiver of indictment by grand jury for certain misdemeanors.
14. To amend the constitution so that similar waivers in cases of felony would be made possible.
15. To improve and enlarge the industries of all penal institutions.

The prison commission, like its earlier private prototype, the Prison Association, found it natural, immediately upon embarking upon its duties, to extend its scope of inquiry and recommendations to the field beyond immediate inspection. We have here another example of the possibilities of improvement merely by sustained supervision even without mandatory powers, although the latter are very desirable and are constantly urged. Of late years the Prison Commission has not been as effective as had been expected. It has lost some of its earlier initiative and is tending to be

satisfied with the routine work of inspection, of passing on proposed building plans for penal institutions, of taking mechanically the estimate of public institutions for commodities to be purchased during the year and giving the necessary releases, and of collecting undigested statistical data relating to the population of penal institutions. The field of the Prison Commission is almost as great as that of the State Board of Charities but neither its staff nor its standards, nor its initiative have been comparable with the former.

STATE BOARD OF CHARITIES

Supervision by the State Board of Charities has been limited to the women's and children's reformatories. The powers of the Board have been, perhaps, greater in respect to the institutions under its jurisdiction than the power of the Prison Commission in relation to its institutions; but it does not seem that the Board has used any means other than its supervisory powers, any more than has the Prison Commission. It depended largely upon cooperation by institutions but seems to have received little of that. The Board has given attention from time to time to matters of discipline, classification, and industrial education. But their criticisms, being merely statements and seldom backed up, had no teeth. The Prison Commission's recommendations similarly failed to receive the proper amount of respect until the passage of a law in recent years¹ permitting them to close such local penal institutions as failed within a given time to make structural changes required by the commission. In the last two or three years the commission has been exercising this power. The influence of the State Board of Charities has been further reduced in recent years by the increasing power of the fiscal supervisor of charities who has

¹ Chapter 379, laws 1914.

come to be the most important factor, through his control of appropriations, in shaping the policies of the reformatory institutions. While in the active shaping of the institutions' fortunes the State Board has been comparatively ineffective, its annual reports do provide perhaps the best supplementary source of information for general conditions in those institutions. From the standpoint of supervision the State Board of Charities has been working quite satisfactorily. It is only because we demand more than supervision, because we demand an enforcement of law, and the centralized shaping of general policies, that a feeling of futility regarding the State Board has developed. They have not made their prestige and powers count sufficiently in making changes, though they have satisfactorily exercised the supervisory powers for which they were primarily organized.

The private reformatories, unlike the state reformatories for women, were in existence at the time of the establishment of the State Board of Charities. The Board was given powers of visitation and inspection over these institutions. But the records would indicate that the Board or its individual members paid little attention to this group of institutions. The principal work of the Board regarding private reformatories has been the establishment and development of rules governing the conditions of public subsidy received by them. Perhaps the insufficient staff of inspectors is in part to be held responsible for this neglect. No stand has been taken by the Board regarding the general policy or the status of private reformatories. There has been a certain difference, of course, between the relation of the Board to private institutions and its relation to public reformatories. Catholic institutions, especially, have been inimical to supervision or interference by the State Board.

In the matter of public supervision perhaps more than in any other single line of development we have progressed.

If we disregard the question of the enforcement of standards and of recommendations of the supervising authorities, and limit ourselves to the question of inquiry and report, we may feel that the necessary standards have been attained. But our demands are growing. It is felt that it is no longer sufficient to discover what happens. We feel that the state is establishing standards of its own which sooner or later must be imposed upon all institutions within its borders, whether or not they receive public subsidy, and we feel that conditions obtaining in any institution within the state, whether governed by the state or not, reflect equally upon its criterion of public responsibility.

There is, at this time, a better balance between potential, and active, means of public supervision. The former are still necessary. Interested individuals, philanthropic visitors, the public press, grand juries are a necessary potential power. The Prison Association has, in the three decades since the creation of the Prison Commission, functioned both as an active and as a potential supervising body. It has continued to inspect correctional institutions, thus supplementing the active routine supervision exercised by the State Board of Charities and the Prison Commission. By the appearance of the latter in 1896, the Prison Association was enabled to reduce the amount of its inspection work and concentrate more on educational and propaganda work. It has thus developed more in the nature of a potential agency of supervision. Its effectiveness has thereby hardly been diminished, and it has continued to be probably the most important continuous factor in prison reform in the state and county. In fact it is probably the leading American exponent of Prison Reform and may justly claim the greatest share in the advancement of methods of dealing with delinquents in this country.

CHAPTER XXII

ADMINISTRATION

IN some respects, at any rate, our present standards of administration show decided progress over earlier ones, and justify some optimism for the future. First among these is the prevalence of civil service, and through it, emergence from the insidious petty political control. All our state and city institutions, and some, at least, of the county penal institutions, are subject to civil service laws. It is hard to overestimate the advantages of this system. While it does not necessarily give absolute protection to an honest and industrious officer, or render impossible his removal by political machinations, or absolutely assure the appointment of those specially qualified for the positions, it does go a long way in that direction. The civil service system has put a stop to the general assumption that politics and political influence are the only or chief qualifications for office and that a change in the political complexion of the state or locality necessarily involves the complete change of the entire personnel of the institution. That part of the political control, therefore, which affected the appointment of the subordinate officers of penal institutions, and which has been the most vicious effect of political interference, has been almost eliminated. The seriousness which still attaches to the dependence of the executive heads of state prisons upon politics, is slight compared with this now abolished evil. We may justifiably feel, therefore, that a great step in the improvement of the calibre of institutional administration

has been successfully taken by the introduction of civil service. One might even say that this change constitutes the most important administrative development.

The salaries paid to the officers through the entire scale has been considerably increased so that the position of keeper or guard may now be held with fair assurance of a reasonable livelihood for both the official and his family. A professional standing is gradually being attained by employees of penal institutions, which further aids in raising the quality of service rendered. Technical standards of service are being defined and developed, and the keeper or guard of an ordinary prison comes to feel something of a professional pride in his qualifications for his job. Compare with this the earlier situation where all, from inspector down to the lowest and poorest paid official, depended for their appointment and retention of office upon the favor of the local political boss, and therefore upon the results of the annual election, and the extent of the development is clear.

The impression is not justified, however, that we have at all attained a desirable state of freedom from politics, or service by qualifications. It is only by comparison with the earlier standards that we may congratulate ourselves upon our attainments. We are still a long distance from a rational organization of the profession of penology.

KEEPER OF CITY JAIL 1658

The first public officer for carrying out the mandates of the criminal court was probably the hangman, with whom we have very little to do in our history. The public whipper who existed for a short period simultaneously with the early prisons concerns us hardly more. Our first prison keeper was probably the jailer of the city prison in New York (or New Amsterdam). His duties were prescribed and his

salary provided by a city ordinance in 1658, which we have quoted elsewhere.

SHERIFF

The next in chronological order is the sheriff. His office began probably with the organization of the counties in 1683, and was included in the first state constitution.¹ He was to be appointed annually not exceeding four times in succession and was to hold no other office at the same time. The constitution of 1821² designated the sheriff an elective officer, to be chosen at the popular election for a period of three years, and not to succeed himself. The constitution of 1846 made no change, and sheriffs serve at present under the terms of the constitution of 1821.

ALMSHOUSE SUPERINTENDENT

The almshouse superintendent as the administrative officer for the almshouse, bridewell and workhouse in the City of New York was the next type of administrator, and foreshadowed the later type of centralization under which, in the City of New York, and in the state prison system, a single administrative head became the real executive for a number of institutions. The office of almshouse superintendent was created sometime before 1800.

KEEPER OF STATE PRISON 1796

In the law of 1796 the most important administrative officer was created, designated as the keeper. One such officer for each of the state prisons was provided in that act, each to be appointed by the governor, and to be chosen preferably from a mechanical trade. The inspectors provided for in the same law and retained in one form or another

¹ *New York Constitution, 1777*, article 26.

² Article 4, sec. 8.

until 1876 were in a sense also administrative officers in that their duties were very full and required frequent presence and intimate participation in the real administration of the prisons. More properly, however, they are to be regarded as the managers, and the keeper as the administrator or executive. The office of assistant keeper was created in this same law, but similar offices under similar titles had been created by earlier ordinances in the City of New York.

AGENT AND WARDEN 1854

It is not clear just when the offices of agent and of warden in the State prisons were created, but by 1820 we find the office of agent established and the "keeper" referred to as principal keeper. The two officers, agent and warden, had different fields of duty, each supreme in his own field. The agent was the business representative in respect to all financial and industrial matters, while the keeper was the representative of the state as a disciplinarian and in all matters of administration proper. In the laws of 1828 an agent and a principal keeper are the chief officers provided for both state prisons. By the "forties" the title of the principal keeper seems to have been changed to warden and in 1854 the two officers were combined under the title of agent and warden, which titles still obtain in the state prisons.

A superintendent as the head of an institution appears for the first time in the House of Refuge and becomes a standard title for the executive head of reformatories.

MATRONS

No need seems to have arisen for a woman executive head until the organization of the Magdalen Home. But a matron subject to orders of the agent or warden of the state prison has been on the pay roll practically since the

opening of the state prison. The laws of 1847 (Sec. 59) provide the same powers and duties for the matron of the female department at Sing Sing as for the warden of the men's prison. The women inmates at Newgate were under officers of their own sex. This method did not obtain generally in the other prisons. The county jails almost in no instance employed matrons. Provision that the sheriff's wife act as matron has been very irregularly introduced in the various counties. We have reliable information that the women in the city prison of New York were under male keepers. It was with difficulty that some public-spirited women succeeded in obtaining the appointment of two matrons for the city prison in 1838, but their success even then was temporary, and the matrons were dismissed after a few years. By the middle of the forties we find male keepers again guarding the women prisoners there. In 1845 there were no matrons in the female department of the penitentiary on Blackwell's Island. In 1846 a matron was again appointed in the city prison of New York but was on duty during the day only; at night a male officer continued to have charge of between fifteen and eighteen women. In the same year, as a result of public pressure, matrons were appointed for the penitentiary also, but only two such officers were provided for two to three hundred undisciplined inmates.

Women's reformatory have been from the first administered by women executive heads. All other employees of these institutions except a few mechanics and farm hands have also been women. The mechanics were occasionally utilized to help officers of the institution in disciplinary cases, but otherwise have had no part in the administration. For some time after their establishment these reformatories did not have women resident physicians but in the last fifteen or twenty years the situation has been remedied. Even

now, however, there is, contrary to law, a male visiting physician for the State Farm for Women at Valatie. The county penitentiaries included matrons among members of the staff from the beginning of their career. Both the Albany and Monroe County penitentiaries, for example, provided in their first rules and regulations a matron and assistant matron, both resident. Their duties were elaborated on, and they were made an integral part of the institution's general administration.

APPOINTMENT

The appointment of administrative heads of institutions and that of the subordinate officers has generally rested in different hands and the difference has frequently caused administrative difficulties of the greatest seriousness. By the law of 1796 the *keepers* of the state prisons were to be appointed by the governor in the same way as the inspectors. Assistant keepers were appointed by the keepers in such numbers as the inspectors might determine. It soon became the custom for inspectors to nominate and practically appoint their share of the assistant keepers and guards so that the subordinate offices in the prison became petty political plums. In establishing the state prisons following Newgate, the number of subordinate officers was designated by law instead of, as earlier, being left to the discretion of the inspectors. The laws of 1828 for example, provide specifically for the exact number of officers, including assistant keepers, for each of the state prisons. In the same law we find the first legal safeguards against undue control by agents or wardens of some of the superior officers in their prisons. It was provided that the clerk be appointed by the governor and senate for a four-year term so as to make him independent both of inspectors and agent; chaplains and physicians were to be appointed by inspectors so as to render

them independent of the agent; but the appointment of subordinate officers was still left with the executive head. No limitations were placed by law upon the qualifications for office of any except the keeper, in whose case it was provided that he be appointed preferably from one of the mechanical trades.

In the City of New York the keeper of the penitentiary was allowed to make no appointments himself. Both he and his deputy were appointed by the common council while all assistants and guards were appointed by the almshouse commissioner. This gave the keeper upon whom rested the responsibility for the administration, no control whatsoever over his assistants, who, if opposed to him personally or of a different political party than himself, could defy him with impunity. This dual authority over appointments was recognized as responsible for a great many of the evils at that institution, and one of the first duties of the inspecting committee of the Prison Association was to attempt its abolition. They succeeded in transferring the appointing power from the almshouse commissioner to the principal keeper. In this double-headed system we recognize our traditional political spoils system with its attendant evils.

As to the number of officers required in institutions, automatic standards have gradually arisen. For the proposed workhouse in 1849 the suggested payroll was based on the ratio of twenty-five inmates to one keeper or matron; the ratio now is more nearly fifteen to one.

In reformatories the Board of Managers appoint the superintendent who in turn appoints the other officers. Since the introduction of the civil service system, such further appointments are made from civil service lists. The matter of appointments in general has now been satisfactorily solved by the adoption of the policy that the executive head alone be appointed by the managing body; that the

executive head appoint all subordinates with the exception of a few, whose tenure of office should be independent of the executive head, as for example that of the physician, clerk and chaplain. In the state prison system the superintendent of prisons appoints the agent and warden, the physician and chaplains. The warden appoints all keepers and clerical help with the exception of one clerk, who depends for appointment upon the superintendent, and one other clerk, who is appointed by the state comptroller. Superintendents of the reformatories appoint all subordinate officers, subject to the approval of the Board of Managers. In the City of New York all officers, high or low, are appointed by the commissioner of correction, who is the administrative head as well as the managing authority of the entire system. In county jails, the sheriff being an elective officer, combining the functions of management and administration, appoints his subordinates without formal control or approval of any other authorities. The actual control is entirely personal or political.

For some time during the earlier part of the nineteenth century it was felt that the officers of the state prisons could not be relied upon entirely for the protection of the local community from the inmates of the prison. These were regarded as pent-up brutes, always ready to break out and upon breaking out resorting to murder and robbery. There was therefore provided in New York City, Auburn and Sing Sing an organized citizen guard with paid officers, who might be called upon, when necessary, for armed control of the prison. In fact, the choice of Mt. Pleasant for the location of the prison, afterward called Sing Sing Prison, was determined in part by the availability of not less than two hundred able-bodied citizens who could carry arms and be depended upon to protect the community from possible outbreaks. Occasionally, indeed, the guard was called upon

Not, however, because of an actual need but because of a morbid cruel fear.

In almost all penal institutions the citizen body of officers has been supplemented more or less by trusted inmates. At the Newgate Prison, the foreman of the first industry to be introduced, the making of boots and shoes, was an inmate. In all prisons, whether for felons or misdemeanants, there has always been considerable use made of such "trusties." The utilization of inmate help or monitors was an integral part of the administrative system of the Elmira Reformatory. These inmate officers have generally been rewarded by special favors in the way of extra privileges or rations; the positions have been considered desirable, and frequently a system of graft was developed in connection with their distribution. It would hardly be possible to get along entirely without such inmate help, but the excessive use of it has always led to abuse. The not infrequent tyranny of the "captain" in the old houses of detention, of the monitors in Elmira, of the "trusties" in all prisons, and recently of the "sergeants" at Sing Sing is an eloquent warning of the danger of this kind of supplement to the administrative staff, without very careful restrictions. A recognition of the situation at Elmira is causing the elimination, at present, of the monitor system under its new superintendent, Dr. Frank L. Christian.

There has been little change in the duties or responsibilities of executive heads of prisons. The fiscal and business responsibilities of the agent, keeper, warden, or superintendent—by whatever name he goes—were much the same at the time of the organization of our penal institutions as they are now. Somewhat greater care has been exercised since the law of 1828 in the matter of requiring bonds from such officers. But in respect to duties, there is, on the whole no radical change during

the entire history. In the standards for carrying out their duties there have been changes. These standards have been elsewhere discussed. We need refer here merely to the matter of records and statistics. There has been an increased amount of records required and greater uniformity demanded. In the state prisons there have been comparatively fair records from the very first, though not indeed what would be considered desirable. Even at present, there has not been developed a fully satisfactory system of records in the state prisons. The best system thus far has been worked out in the reformatories, particularly at Elmira and in the House of Refuge. This applies principally to records pertaining to inmates; financial and business records also have been improved at a greater rate in the reformatories, because of the stricter control exercised over them by the office of the fiscal supervisor of charities. The worst records have been kept in county jails. There had been practically no requirement for such records before 1847. The rule laid down for the first city prison requiring that the jailer note down the time of admission of each prisoner, his name, the time of his discharge, and an inventory of his property does not seem to have affected the county jails to an appreciable extent. The laws of 1828, re-enacting provisions of 1819, did provide for certain criminal statistics to be reported by the agent of the state prison, but failed to extend the requirement to county jails. One of the principal complaints of the inspecting members of the Prison Association in 1845-6 was the absolute lack of any records, to say nothing of statistical information, in county jails. To remedy the situation the Association drew up a schedule for registering the desirable information and another schedule for reporting the same. They distributed printed blanks bearing these schedules in the course of their inspections and urged keepers to fill them out and send them in.

The schedules were excellent in character and provided for all the essential information. Inspecting committees of the Association carried the schedules with them on their inspections so that for some time very valuable statistical material was obtained in this way.¹ Not content with this voluntary co-operation, the committee of the Association which drew up the prison laws of 1847 included in their drafts the requirement for keeping records in conformity with the tables previously recommended. The provision was included in the laws as finally passed.

It was not, however, until the organization of the work of the State Board of Charities and later of the Prison Commission, that complete and reliable statistics were obtained for all the reformatory and penal institutions of the state. These, while in the case of the Prison Commission, statistically faulty to a considerable extent, do present the necessary minimum. They are, at present, the most important single source of statistical information on prisoners in the state. The figures collected by the State prison inspectors in 1847 during the single year when they inspected county prisons, are almost the only complete record of jail population prior to the collection of statistics by the Prison Commission. For the City of New York fairly adequate population statistics have been available from the first. The word adequate must not be interpreted as satisfactory. It is used merely by comparison with the absolute lack of records in the earlier period. In the county jails, moreover, no law existed to compel sheriffs to transmit records of inmates to their successors in office. As a result, each sheriff either kept or destroyed his records. It was only in the last quarter of the nineteenth century that this practice was finally eliminated. The law passed in the sixties re-

¹ In Part II of the annual report of the Prison Association for 1846 these tables are reproduced and their use illustrated.

quiring the secretary of state to collect criminal statistics related only slightly to the penal institutions, but more to the courts. Material collected by the secretary of state has borne little relation to institutional statistics. In 1866 it was suggested that the secretary of state be authorized to avail himself of the services of the Prison Association for the compilation and interpretation of statistics, but the suggestion met with no success.

Salaries of officers have, during the greater part of prison history, been determined either by law or by the appropriating bodies. Comparatively low salaries have been the rule until very recently. In the earlier period officers of the detention prisons and jails served entirely on the fee basis. In the first city prison of New York this is clearly stated by the rules heretofore referred to. For county jails the fee system for payment of sheriffs obtained until the end of the nineteenth century; gradually, during the last third of that century, by piecemeal legislation, sheriffs were made salaried officers, but not until the end of the century had the process been completed, and even then keepers or jailers as distinct from sheriffs, occasionally continued to hold their office on the old basis. There is, even now, a jail in one of the counties of the state in which the jailer receives no salary but depends entirely upon his income from a per capita fee for feeding his prisoners. With the exception of this negligible remnant, the fee system has been practically abolished. Most of the salaries of prison officials are now, as they have been since the laws of 1828 or even earlier, determined by law. Some depend upon the appropriation bills annually passed. In some cases salary classification or civil service commissions or the city authorities have the power of determining salaries. The trend is definitely towards a graduation of service and salaries with regular increases within specified limits.

The real interest in the administration of prisons lies not in the formal provisions in law, ordinance or custom regarding the title, duties, salaries and methods of appointment of administrative officers, but in the calibre of these officers, their intelligence, ability, honesty and humanity. The history of the administration of penal institutions could perhaps best be told, therefore, by describing the persons at the head of those institutions and to some extent the type of their subordinates and the relation between executive head and subordinates. This task is of course prohibitive and we must limit ourselves to a few instances of the effect of the character of administrative head upon the general system and the welfare of the inmates. The history of county jails is meagre in this respect. Those institutions have never been conducted in a way comparable to the prisons or penitentiaries. Their disciplinary and administrative problems have never been of such a nature as to allow for great differences between successive administrations. The standards of cleanliness, the amount of voluntary aid in rehabilitation or in defense before the court have varied from sheriff to sheriff; but on the whole there have been no striking differences and there have resulted no serious sufferings to inmates. The history of the state prisons on the other hand might be told almost entirely in terms of their wardens. For the first brief period, Newgate prison was conducted by Thomas Eddy, one of the men responsible for the introduction of the bill which created the prison and abolished capital punishment. Soon he was replaced and we hear of no striking personality in control of that institution until its abolition.

To judge by the remarks of the author of "Inside Out" there was not much to be said for the officers of the Newgate Prison in the twenties. Due allowances should be made of course for the opinion of an inmate regarding his admin-

istrative officers. But other experience justifies the acceptance in part at least of the judgment passed by him. Not so much by direct accusation as by innuendo he criticizes the calibre of the staff. Of the agent he says: "He should neither be an ignorant coxcomb nor a superannuated poetaster. . . . instead of indulging in the reveries of imagination heated by brandy and tobacco he should above all be well acquainted with the honest mode of stating accounts and be disposed strictly to adhere to and to practice that knowledge" Regarding keepers and assistants, of whom there were twenty-four, he quoted part of a letter written by a former keeper of the prison: "The principal part of them (keepers) are foreigners. . . . They are not possessed of common morality drunkards and swearers who prosecute the well meaning prisoners." Of the principal keeper he says: ". . . . he should seldom be intoxicated and never officially act while under the influence of liquor" In characterizing the attitude of the keepers towards the labor requirement of prisoners, he quotes one of the keepers in reply to a request by an inmate that his work be changed or his task reduced in the weaving shop because of poor eyes; said the keeper:

Dom it I dinna care mon if ye had nae ee
in your hale head, the claith must be wove.

Auburn Prison began with some eminent figures, including among them Elam Lynds, and his deputy, Mr. Cray, and Judge Powers. The first stormy period of the Auburn Prison might be told in terms of Mr. Britten, builder and first agent, the ingenuity of Deputy Cray, the sterling sense of Judge Powers, and the cruelty of Elam Lynds. Sing Sing Prison has been an institution with alternating wardens of opposite characters. Under some of them the

institution was an ante-chamber to hell, while under others, the prison, even without definite system, was really a reformatory institution. Clinton Prison started well under warden Ramson Cook.

There are a few names in the history of prison administration that ought to be especially remembered. Foremost among these are the names of Gaylord B. Hubbell, warden of Sing Sing Prison about 1860; Mrs. Farnham, matron of the female department of Sing Sing Prison in 1847, an advanced thinker and progressive educator; Amos Pilsbury, the builder and superintendent of the Albany County Penitentiary, and the most successful of industrial managers of penal institutions in this state; Mr. Brockway, for some time superintendent of the Monroe County Penitentiary, then builder and creator of the Elmira Reformatory; Dr. Katherine B. Davis, first superintendent of the Bedford Reformatory and greatest exponent of the reformatory system in women's institutions.

The subject of administration ought to be, if fully dealt with, a volume by itself, and would involve the discussion of all other features of prison work, because of their dependence upon the manner in which the administrator dealt with them. No general principle or principles of development can be found. Its history therefore would consist largely of a comparison of men and women. There is, perhaps, one slight generalization that might justifiably be made, namely, that on the whole, with the passing of the impression that the prison officer is a tamer and repressor, there is gradually disappearing the type of executive head who exemplifies those qualities. There is perhaps an appreciable tendency to appoint executive heads from persons with educational training rather than police type or mechanic. The administrators, themselves, in a sense reflect the general change of sentiment which characterizes the

development of public thought and which enables them to subscribe to a more generous and helpful attitude to the inmate than was expressed in the pronouncements of Elam Lynds, the greatest exponent of repression and more repression. This much generalization may be safe; beyond that one would be indulging in expression of desires rather than in statement of facts.

CHAPTER XXIII

SYSTEM AND ROUTINE

WE hear much of "systems" in the history of our prisons. The word is familiar especially in such combinations as the "Auburn system," "Pennsylvania system," "reformatory system," "congregate and cottage systems." Generally a "system" has meant several things and the rather loose use of the word has been responsible for some ambiguities. There are at least three distinct senses in which the word has been used, and it will make for clarity to think of "systems" as having reference separately to each of those three connotations, namely:

- a. In so far as they relate to living conditions.
- b. In so far as they relate to methods of reformation.
- c. In so far as they relate to methods of administration.

CONGREGATE SLEEPING ROOMS

As to living conditions, we may distinguish three types or systems often overlapping, and not always distinctly defined. There is, first, the "congregate system," represented earlier by the Newgate prison, and now by the Workhouse in New York City; it also obtains, in part, in the cottage institutions for children. The essential feature of this system is the provision of sleeping facilities in the form of a number of separate dormitories. Prisoners generally stay in these dormitories not only at night but also through part of the day as well, and are usually without supervision. The Newgate prison had 52 rooms or dormitories accommodating from eight to fifteen inmates apiece. The Work-

house on Blackwell's Island in New York City has over one hundred rooms on the men's side and more on the women's side, varying in capacity, on the women's side from four to six or seven persons, and on the men's side from four to thirty-five persons per room. In the older type of institution, represented by Newgate and the Workhouse, assignments to these dormitories were made almost entirely on the basis of labor assignment. Little attempt was made at character classification and indeed it was often almost impossible to do so. Some crude classifications have been made, as for example, on the basis of color, of evident age differences, of the more conspicuous states of health; occasionally also on the basis of length of sentence. The latter basis is especially common at the Workhouse, for reasons of administrative convenience. From the time the inmate enters his dormitory when the day's work is done, to the time when he leaves it the next morning, there is only the occasional supervision of the night watchman who passes through the building. This system has been universally condemned. It has all the disadvantages of indiscriminate commingling without any of the advantages of safety or classification obtaining in the other housing plans.¹

AUBURN SEPARATE SLEEPING CELLS 1820

The second system in chronological order, was the Auburn plan of sleeping quarters. This consisted of separate cells, one to each man or woman, to be occupied from the end of the working day to the beginning of the next working day, and during the greater part of Saturday afternoon and Sunday. This plan, when fully carried out, provides at least the privacy of one's individual cell. This arrangement however, has often broken down, because the congestion which every prison built on this plan has frequently suffered,

¹ Cf. chapter v, discussion of cells and dormitories.

neccsitated the "doubling up" of prisoners in the cells. Its disadvantages consist first in the exceedingly small size of the cells, which has been responsible for outrageous sanitary conditions, especially at Sing Sing and Auburn, and the very poor ventilation which has almost regularly been found in prisons of this type. The congregate plan above referred to and this the Auburn plan both admit, of course, of the same arrangement for work in association in shops or gangs. They represent mainly different types of construction for housing purposes.

COTTAGE SYSTEM

The third method of housing prisoners is the cottage (or group) system. This term is frequently used as an antonym to "congregate." When so used it should be understood as referring to the breaking up of large units of population into a number of smaller ones, each of which becomes a complete unit in itself, whereas the "congregate" plan whether of the cell or dormitory type leaves the great mass undifferentiated in the provision of housing facilities. Cottages in children's and women's institutions have been generally planned for units of twenty to thirty-five; in most cases, the cottage represents not only a social or character unit but also a domestic unit, in the sense that meals are prepared and eaten separately in each cottage. The word "cottage" has been unkindly received in prisons or penitentiaries as connoting too much coddling, and therefore the word "group-system" has been substituted; but the principle remains the same, namely, of breaking up the population and its living accommodations into smaller units, so far as possible, separated, from each other. Within each cottage or group there may be either the separate room, or the dormitory¹

¹ In that case it is a kind of congregate within cottage system.

system. In women's institutions a separate room is given to each inmate; in the boys' institutions each cottage has a dormitory. The term "congregate" is often applied to cottages as well, when inmates occupy dormitories rather than separate cells or rooms.

These, then, are the three systems from the standpoint of living conditions. In respect to the methods of reformation a more elaborate classification is necessary. The following would represent the chief forms:

1. Congregate system.
2. Pennsylvania or separate system.
3. Auburn or silent system.
4. The House of Refuge system.
5. The Irish System.
6. The Elmira System.
7. The Cottage System.
8. The Honor System.
9. The Self-government System.

Some of these occasionally overlap but they all represent sufficiently distinct principles to allow of definition and description.

SYSTEMS OF REFORMATION

I. "CONGREGATE"

The congregate system as understood in this sense is the one best exemplified by the old Newgate Prison and the present New York City Workhouse. It is really no system at all. It implies merely the admission of prisoners on whatever sentences given by the court, their distribution to the various sleeping places, shops, or working gangs without any classification by trade or working capacity, and their discharge from the institution when their time is up. This system represents the crudest form of imprisonment; and the only

test of success applied is that of economical maintenance and at least superficial discipline, implying freedom from riots, or other serious disturbances. It was the wild growth of this blind, unintelligent, systemless system, and its consequent evils as manifested in the Newgate Prison, that almost discredited the substitution of punishment by imprisonment for capital and corporal punishment. It was abolished in our state prisons, with the passing of the Newgate prison. In the New York City prisons (excepting the workhouse, and to some extent, its branches) it passed about the same time, namely, with the erection of the cell penitentiary on Blackwell's Island about 1828. It passed slowly from the county jails as the older institutions were replaced by new buildings. These latter were almost in every case constructed on the Auburn cell plan.

2. PENNSYLVANIA OR SEPARATE SYSTEM

The Pennsylvania or separate system was never introduced in any convict prison in this state. The essentials of that system consist in the assignment of each inmate to a separate cell in which he stays all day and night and in which he does all his work. Institutions built on this plan provide very much larger cells than those of the Auburn type, and equip the cells with the tools, or instruments necessary for labor. In some cases, also individual exercising yards are provided. There is only one remnant of this system in New York State, namely in the punishment cells at the Auburn and Clinton prisons, on Riker's Island in New York City, and at Bedford. The first three include separate exercising yards. None of them contain arrangements for work. It is in that respect particularly that they constitute punishment cells. All the controversy attached to the history of the Pennsylvania system may be disregarded for our present purposes inasmuch as it was never actually introduced in this state.

3. AUBURN

The third system (second in chronological order) is the Auburn or silent system. Elsewhere we have referred to its origin.¹ It was practically accidental. Its essentials are separate confinement at night, work in association during the day and silence at all times when prisoners are together for any purpose, whether for work, meals or exercise. The first two essentials namely, the use of the separate cells at night and association by day have been retained without change. The requirement of silence has had a less continuous history. It was never fully observed except perhaps in the very first few years at Auburn, when shops were provided with elevated galleries from which keepers could exercise constant supervision. Even then prisoners contrived to communicate without moving their lips. As the value of silence lost importance and the failure to enforce it became more evident, its stringency was somewhat relaxed. Of late it has become a definite part of the reform plan to abolish the requirement of silence, especially at meals. The purpose of imposing silence upon prisoners was not to intensify the punishment, but merely to prevent the moral contamination that was assumed would follow communication. The silence was to be the substitute during the day for the separate confinement at night. It was conceived of, therefore, merely as a continuation of solitary confinement in order to avoid communication, not as an imposition of special hardship. The Auburn system has had almost absolute vogue in our state. Auburn, Sing Sing, Clinton, all the county penitentiaries, and to a large extent even the Elmira reformatory embraced the essentials of the Auburn system. The chief exceptions have been the Workhouse in New York City, and the county jails, all of which have

¹ Cf. chapter v.

had a rather loose haphazard system more akin to the congregate type of the first Newgate prison. The Auburn system remained without rivals in this State until the appearance, in the fifties, of the Irish system, and later, of the Elmira Reformatory.

4. HOUSE OF REFUGE

The fourth system up to this period was the system of the House of Refuge. It has never been referred to as a distinct system but deserves to be so considered quite as much as any of the other so-called systems. First because to begin with it represented an entirely different attitude towards the inmate. It frankly and clearly placed the training and reformation of the child foremost, even though, from our present standpoint the idea was not consistently carried out at all times in the routine or management of the institution. The essentials of the system of the House of Refuge may be thus described:

First, a general paternal attitude towards the inmate.

Secondly, an indefinite term of sentence, its actual duration depending entirely upon the judgment of the board of managers, and based not mainly upon the crime for which the child was committed, but upon plans for his future in education and industry.

Thirdly, responsibility for the child continuing after his discharge from the institution and until his attainment of the twenty-first birthday in the case of boys, and of the eighteenth in the case of girls. It is not so much as a clear-cut system that the House of Refuge represents an important type, but more in having introduced an entirely different general attitude towards the prisoner, one which slowly and imperceptibly entered the general public consciousness and affected fundamentally the future development of the prison system.

5. IRISH SYSTEM

About the fifties the Irish system appeared. Not, however, embodied in any institution in this state, but as a subject of wide discussion and intensive propaganda. Probably no other theoretical contribution to prison science has had a wider, and none so sympathetic a consideration both by prison administrators and by outside reformers as the Irish system. Perhaps this may be due to the guarantee represented by enthusiastic reports made by prison executives here and abroad. The essentials of the Irish system were the indeterminate sentence (informally existing already in children's institutions), though not so-called, and the succession of grades attained by promotion and marked by increasing privileges granted to inmates preparatory to their final liberation. It included also intense educational activities under Mr. Organ and the most individualized type of after-care and supervision that has yet been developed in connection with any penal or reformatory institution. While the Irish system was never introduced in this country in the form of a concrete institution it was responsible more than any other system or theory for the plan developed at the Elmira reformatory.

6. ELMIRA

What is known as the Elmira system grew up from the work of men who were deeply impressed with the advantages and promises of the Irish system. The men who proposed the institution, those who planned its administration and finally Mr. Brockway, who worked it out, were all disciples of Sir Walter Crofton and Mr. Organ; in fact the Elmira system was very largely an attempt to develop an institution for younger men on the basis of the Irish system. We therefore find the Elmira system representing the following essentials:

An indeterminate sentence, this time so designated and definitely introduced into the statutes of the state.

The mark system, which came from Maconochie's experiments in Australia through the Irish system, and became the mechanical means of carrying out the indeterminate sentence.

The grading system which transplanted, in a modified form, the successive types of prison regime included in the progressive Irish system.

These were the first essentials of the Elmira reformatory. The later features were superimposed upon it, and were accounted for by local developments. Military training for example, and organized trade instruction, came as a result of the vicissitudes of the labor system, and particularly of the abolition of productive labor through the Yates law of 1888. Upon both the remnants of the Irish System and these new developments there was further grafted the scheme of academic education and psychological training devised by Brockway as a result of his knowledge of prison types, and particularly of the faults of prison administrations. The Elmira system was nowhere later developed so fully as at the original institution. It was weakly imitated in the City Reformatory for Misdemeanants in New York, in the branch of the Elmira reformatory at Napanoch, and, in respect to certain parts of the system, at the House of Refuge and the women's reformatories. It has had a life of some forty years of undisturbed supremacy, which it is only now ceding to newer methods.

7. COTTAGE SYSTEM

The cottage system is the latest plan of constructive institutional management. It depends for its workings upon a special arrangement of the physical plant above described.

¹ Cf. chapter v, and earlier part of this chapter.

The principle underlying the cottage or group system is very simple. It is the principle of classification, and the physical segregation of separate groups homogeneous in themselves, and different from each other, for the purpose of providing treatment for each group in accordance with the principal characteristics they manifest. The greatest range in respect to all matters of treatment may be thus employed if the proper facilities are available. Almost unlimited freedom, with complete responsibility, may be admitted for one group, while constant supervision and hard routine labor may be prescribed for another. A greater variety of work may also be performed in this way, and, most important, it is possible on this basis really to individualize in the treatment of inmates, providing the staff of officers is carefully chosen and each member fitted for the particular group to which he or she is assigned. No serious attempt has as yet been made to introduce the cottage system into institutions for adult males. It has been introduced both in the women's reformatories and in children's institutions. The first reformatory in the United States organized on the cottage plan was the Ohio school in Lancaster, Ohio, established in 1854. In this state it was not until the beginning of the twentieth century that any of the institutions for delinquent children were transformed from the congregate to the cottage type. The Juvenile Asylum was perhaps the first of this group. It was removed to its present quarters in 1904. The Western House of Refuge for Boys was transferred to a cottage institution about 1906. The Jewish Protectory and the Lincolndale School followed later. Perhaps the George Junior Republic should be included in this list, although that institution was not organized primarily for delinquents, and at no time was an outright reformatory. All of the women's reformatories were planned for the cottage system, but none of them was whole-heartedly committed

to it in the original plan of construction. There are still remnants of the congregate plan at Hudson, Bedford and Albion. The first attempt at the group unit system for adult males is now being introduced at the Westchester County penitentiary. The buildings were very carefully planned for this purpose and were completed in 1917. It is too early as yet to pass judgment as to its success or failure. The new state prison at Wingdale and the reconstruction of the Sing Sing Prison are both planned largely for this system.

8. HONOR SYSTEM

Two more "systems" have made their appearance in the last decade, but they bear more on the nature of administration than upon the entire scheme of reformation. Nevertheless, they are important enough for the latter as well, and may lead to future development of such magnitude that they should at least be mentioned. They are the honor system and the self-government system. The former has had its origin in the western states, particularly in Colorado, the latter in this state. The honor system is hardly more than the extension of the privileges granted at all times in prison history to certain trusted prisoners. It has become a "system" chiefly because of its exercise *in extenso*. In this state the prisoners deemed worthy of such special privileges have been collected from the entire state prison system and concentrated to a large measure in the one institution at Great Meadow. It was thus possible in this prison to let down a great many of the traditional safeguards and to grant its inmates a very much wider scope of privileges than at other prisons. Moreover, the personality of the warden has exercised a peculiar attraction for the prisoners and has gained their loyalty to such an extent that the extension of privileges and freedom and the reduction of the ordinary

modes of supervision have been thereby made safe. More careful analysis recently of the administrative methods at the Great Meadow Prison would seem to indicate that the amount of "honor" in this system has been exaggerated; that, in fact, despite the very carefully selected population and despite the personality of the warden, the supervision has remained, while apparently generous, nevertheless, quite strict; and that even within the population so selected further differentiation was made and only a limited number were permitted the much discussed freedom "upon their honor." We may therefore conclude that the honor system at the present stage is neither a new system, comparable to the others described, nor a new administrative method, but simply a reasonable extension of individualization among prisoners.

9. SELF GOVERNMENT

The self-government system is more philosophical, more truly a system, has greater possibilities and greater dangers. It has been known as long ago as 1830 and was fully reported on by Beaumont and Toqueville as exercised at the time in the Boston House of Refuge. Their judgment of the system there was exceedingly favorable but they felt its dependence upon the personality of the superintendent, and concluded, therefore, that a system of less excellence but more independent of personal qualifications would on the whole be preferable. Self-government was evolved in the nineties of the last century by Mr. William R. George, probably without knowledge on his part of the early Boston prototype. He established at Freeville, New York, the Junior Republic for delinquent and unmanageable boys and girls. The institution was conducted entirely as a "republic" with the boys and girls as its citizens and with little interference on the part of the administrative staff. Not

only the general routine but also the discipline, that is, the system of punishment and correction within the institution, was entirely delegated to the "citizen body." In 1915 Mr. Thomas Mott Osborne, who had for years been a director of the George Junior Republic, was appointed a member of a new Prison Reform Commission by Governor Dix, and entered the Auburn Prison as a volunteer prisoner in order to obtain first-hand information of a nature that he thought necessary to enable him and the Commission to make an intelligent report on the matter of prison reform. Out of his voluntary incarceration grew the organization of the Mutual Welfare League at the Auburn Prison, with its tentative self-government under the spiritual leadership of Mr. Osborne. Very soon a similar organization was started at the Sing Sing Prison under the name of Golden Rule Brotherhood under Warden McCormick. As a result of some charges of favoritism Warden McCormick resigned and Mr. Osborne was appointed warden of the Sing Sing Prison. He immediately introduced complete self-government under the inmate organization, bearing the same name as the one at the Auburn Prison. The last two or three years at Sing Sing and in the State Prison Department as a whole have been stormy with the partisan activities of supporters and opponents of the self-government system. The situation was complicated and disturbed by the personal equation of the officers of administration concerned. Self-government has therefore not had a complete test even at the Sing Sing Prison. It is gradually being worked out, no longer as a complete system supplanting entirely the superintendence by the regular administrative staff, but as a supplementary means both for administration and discipline and also a part of psychological training and civic education. The essentials of the self-government system, centering about the delegation of routine administration and discipline to

elected representatives of the inmate body, are too well known to require detailed description.

It is impossible to choose between these systems as thus briefly described. It is difficult to say that one is worse and the other better. Each one has contributed some valuable thought or method. Each one represents the contribution of some dominant personality and *each has failed to the extent to which the personality of its promoter was an indispensable feature of the system.* If we should ever succeed in working out a rational and well-balanced prison system we should have to be perfectly eclectic, choosing the advantages of each system and discarding those features which in their history have proved to be their weakness.

ROUTINE

To a certain extent the above differences in systems have been reflected in the daily or weekly routine of the institutions. Primarily the institution routine would vary with the type of institution, namely, whether adult or juvenile. In the latter case more time would be allowed for schooling, while in the former, hours of labor would be the most important consideration. But these are merely variations upon institution routine, which can be recognized as much the same throughout.

The daily routine at the Newgate prison is briefly described by the author of "Inside Out": Rise in summer at 6 A. M., in winter at daylight; work until 6 P. M. except for the time taken up by the three meals; to bed at 9 in the summer and at 8 in the winter. The daily routine as described by Warden Powers at Auburn in 1828 consists of a schedule extending, on long days, from 5 A. M. to 6 P. M., and on short days so as to embrace all the daylight. Mr. Powers gives the only full description of a day's routine on record for that period. Each signal bell, the time

of each activity, the duties of the officers regarding each activity are fully set forth. On the whole, it all amounts to about the same thing contained in the terse description of the author of "Inside Out." Other prisons and penitentiaries display the same routine decade after decade, as those described, with not enough difference between institutions to recognize one from another.

The first change of routine is seen in the daily schedule of the House of Refuge. It is given in 1832 by the Boston Prison Discipline Society as follows: Rising at sunrise; children get up on signal given by bell. They make up their beds and at another bell leave their cells. They march to the washroom, parade out into the yard for inspection, then go back again for prayers; from 5:30 until 7 school; 7 to 7:30 breakfast; 7:30 to 12 work, with as much recreation as is gained by completing the task before 12; 12 to 1, ablutions and dinner; 1 to 5 work; 5 to 5:30 ablutions and supper; 5:30 to 8 school; 8 prayers; and return to cell. On Sunday no work is performed. This differs from the regular prison routine in three important respects: First in that the hours of work are limited to 8, secondly in that four hours a day are devoted to school and thirdly, in that the whole day is completely filled, with little or no free time, whereas prisoners had the privilege to use their time between 5 or 6 (whenever they reached their cells) until 8 or 9 o'clock when the lights were extinguished.

No essential change in the daily routine occurs again until the abolition of contract labor in the House of Refuge and the organization of the full Elmira system. The former was responsible for the introduction of the half-day-work half-day-school system, and the latter necessitated the organization of a very complicated and full daily routine, providing for school work, trade instruction, military and

physical exercise. Every moment of the inmates' day in Elmira is carefully provided for, up to the very minute of their return to the cells for the night. In the women's institutions the requirements of institutional work have been responsible for a different kind of daily routine, less formal, perhaps less clear, more subject to variation. Especially when instruction in the domestic sciences was combined with the general work of the institution, the routine was necessarily further modified and complicated. In recent years the extension of the freedom of the yard on Saturday afternoons and Sundays in most of the prisons has further modified the routine. In some cases outdoor exercise has been permitted every day. In Sing Sing, to avoid the destructive effects of confinement in the small cells, the last blow to the invulnerable traditional prison routine was given by the introduction of daily entertainment in the institution chapel and the work of the evening classes under the Mutual Welfare League. The details of the daily routine in penal institutions are of no importance, except in so far as they exemplify their monotony and the failure to utilize for the prisoner's good the four or five hours daily of free time provided since the introduction of the eight-hour day.

What has been wrong with the routine of institutions and what is still wrong with it is to be found not in the daily schedule itself but in the negative, non-constructive, non-educational system, which still characterizes the greater part of the prison management of today as it did one hundred years ago.

CHAPTER XXIV

INDETERMINATE SENTENCE AND PAROLE

THE great achievements of nineteenth-century penology are undoubtedly the indeterminate sentence and parole. No other important step in the progress of the treatment of the criminal compares with them in importance until the introduction of the criminological clinic in the twentieth century. Moreover, no step since has been independent of them or had any meaning except as related to them. Neither the indeterminate sentence nor its complement, parole, has as yet attained its true majority. Neither has as yet been developed to perfection or extended to its logical possibilities. But their popularity is increasing, their use is widening and their value recognized not only by those who appreciate their full significance for the future of penology, but also by those worshippers of tradition to whom a new thought is acceptable only when conformable to the stereotyped practice of the past. Even to this group the indeterminate sentence has been appealing more and more, chiefly, perhaps, because of its potentialities for institutional discipline.

The basic principle of the indeterminate sentence may be summed up briefly as follows: It is the idea that neither the particular crime nor the responsibility of the criminal can be defined and measured accurately; that punishment meted out in exact doses based on such attempted measurement has little value either for the general public or for the reformation of the individual delinquent; that the period of imprisonment should be utilized for the removal of the

causes of the individual's criminality and that the length of that period necessarily should vary with the individual, not with the particular crime committed by him.

The indeterminate sentence has existed in our state in a clear-cut form since 1877, the year in which the organic law for the Elmira reformatory was passed. It has since developed to a considerable extent and is still growing. It was not, however, created out of nothing or brought in without relation to other events in the field of penology. There are at least three elements that have supplied the psychological material which enabled the general public to receive and accept the principle of the indeterminate sentence. These have been the system of pardons, of commutation, and the existence of the House of Refuge.

PARDONS

The pardoning power has been vested in the governor as the executive head of the state. It is the same power that was exercised by sovereigns from time immemorial.¹ The pardoning power has been generally exercised in two kinds of cases: First, if the offender has subsequent to his conviction been found innocent, and secondly, if in the course of his punishment it became apparent that its severity for one reason or another was excessive. Had the pardoning power in this state continued to be exercised in such cases only, it might have constituted no preparatory step for the indeterminate sentence. But early in the history of the New York State Prison the pardoning power began to be used for an entirely new purpose, namely, to reduce congestion in the prison. In the years between 1809 and 1820 especially, prisoners were pardoned as regularly as others

¹ An interesting philosophical and historical account of the pardoning power is given in a paper by Francis Lieber in the annual report of the Prison Association, 1850, pages 95 to 111.

were discharged, with the frank purpose of providing accommodations for new commitments. Pardons had become an accepted fact in the routine of imprisonment and gradually a scale had been worked out by which the time of pardon could be almost certainly predicted for each prisoner. Those who counted on being pardoned and who obtained the necessary outside intervention could count with a certainty on their release at the appointed time. The Board of Inspectors generally recommended the prisoners for executive clemency. "Some convicts . . . never dream of asking for their liberation until a specified time arrives which is understood among them to entitle them to executive mercy. For example, one sentenced for more than seven years . . . when four years confined; and one for less than seven years . . . when one-half of the sentence has expired. The Inspectors encourage . . . the idea and the convicts are not in general deceived in their calculations." This from the author of "Inside Out." Commenting on a list of some thirty convicts pardoned on recommendation of the inspectors, and upon whose characters he had consulted with a number of keepers, the author stamps nineteen out of the thirty as the "most dreadful villains breathing." It was generally necessary to obtain the principal keeper's approval as well as the approval of the judge or district attorney before pardon was granted. But the pressure of congestion was such, that approval was generally obtained except when personal reasons intervened. A similar system grew up in the city prisons of New York, also because of congestion and overcrowding. The matter of pardons became a subject of increasing criticism, and the extreme evils of the system were modified as greater facilities in the penal institutions were obtained.

It was still bad enough in the fifties, and was widely discussed. Among the reasons why the pardoning power

should be limited or its exercise modified, Professor Lieber, basing his statements upon observed cases of pardons, gave the following: First, it causes unsettled reliance on the law. Second, it destroys the certainty of punishment. Third, it is dangerous to the community. Fourth, it interferes with the penitentiary system. Fifth, it induces unintelligent philanthropic meddling. Sixth, it attracts criminals from districts more stringent in respect to pardon. Seventh, it makes sentences of those not pardoned appear unjust. Eighth, it places too great an arbitrary power in the hands of one person. Lieber's recommendation to change the system includes the appointment of a pardon board which would sit once or twice annually, investigate each case and report their findings to the governor, the governor to pardon only on recommendation of the board; a certain amount of publicity was to be given each case in the place where the crime was committed before the prisoner sent from that community would be released by executive clemency.

Abused as was the pardoning power, it did, however, contribute to the development in penology the valuable idea which later was incorporated in the indeterminate sentence, that the sentence originally passed by the judge may be subject to modification based on conditions foreign to the definition of the crime and to the exact punishment required therefor in the penal law. This is perhaps the only sense in which the pardoning power has contributed anything to the origin and development of the indeterminate sentence.

COMMUTATION

A greater and more immediate contribution comes from the commutation system. New York State was the first to introduce commutation of sentence for good behavior as an integral part of the prison regime.¹ The first provision

¹ Investigations by E. C. Wines reported from time to time in *P. A.* reports.

of this kind was included in the law of 1817 which introduced the piece-price system. In order to encourage increased productivity on the part of inmates, it was granted that in all cases where the punishment was not less than five years, one-fourth of the term might be commuted by good behavior and by the earning, through "overwork," of not less than \$15. In this law we find the full principle underlying later commutation laws, namely, the premium set on good behavior and on industrial productivity. These are desirable in themselves. They are further desirable as parts of the character training of the prisoner. They have been retained for both purposes ever since, and constitute an integral part of any prison system. No further extension of the commutation law is found until 1862. Despite some opposition at first, this law was passed and soon became exceedingly popular both inside and outside of prisons. It provided a diminution of the term by one day for each month and two days additional for each month of every six-month period of good behavior. The latter part of the provision proved to be ambiguous and the governor refused to act upon it. The following year the law was revised, providing for one day for each month and two days for every month of each consecutive six-month period during which the prisoner had behaved himself. This provided a maximum of twelve days for every six months. The results of the law were immediately discernible in the improved discipline in the prisons, and the practice became popular throughout the country.¹ Since 1863 there have been slight changes from time to time in the matter of commutation, but the principle has remained untouched. In 1916² a thorough reorganization of the law was made in

¹ As a result of the activities of the Prison Association in showing the excellent possibilities of commutation it was extended by Congress to all federal prisoners.

² Chapter 358.

order to provide two kinds of commutation. One, of the old type, for good behavior, and another, to be called compensation, for satisfactory work. The sliding scale of commutation introduced about 1869, granting greater commutation for those on longer terms, was revised so as to diminish the amount of "good time" for behavior pure and simple, and make it dependent more upon efficiency of industrial work. In addition to the advantages of commutation in itself, in furnishing the prisoner greater hope and a means for working out his own discharge, and further in supplying to the prison executive an instrument for discipline, it prepared the public mind for the extension of the principle included in the indeterminate sentence law which made its definite appearance in 1877.

HOUSE OF REFUGE

It would be of some interest to know just when and how the idea of the indeterminate sentence was first introduced to the prison system of this state or country. Undoubtedly there had been some discussions earlier in England and France.¹ Two events in the twenties of the last century would seem to have contributed to the development of the idea, but they are both in a sense isolated and cannot be definitely linked up with the emergence of the indeterminate sentence in the sixties. These two were, first, the system upon which was based the organization of the House of Refuge, and somewhat earlier, the report of the senate committee under Mr. Hopkins in 1822. The House of Refuge received children for an indefinite period, extending to the time of their majority. The institution took the place

¹ The origin of the indeterminate sentence is being historically traced along with other interesting penological developments by Dr. O. F. Lewis in a *History of Penal Methods in the United States* which will be forthcoming in the near future.

of the parent and maintained responsibility and authority through the period of the children's minority. All the elements of the indeterminate sentence are really to be found in the House of Refuge. But the fact that the system was organized for children and was so intimately associated with their status as children, seems to have prevented the transfer to institutions for adults of the idea of the indeterminate sentence actually in practice there.

Senator Hopkins' idea, proposed in his report to the legislature, was not couched in terms that may be recognized as relating to the indeterminate sentence. It referred perhaps more to the penal law than to the prison law. It provided for three grades of crime in respect of seriousness, and three grades of punishment in respect to severity. The most serious crimes were to be grouped together and were to be punished by the penal provision of the greatest severity, and so on. The definite sentences were to be abolished, and each offender was to be found guilty merely of one of three grades of crimes, and to be sentenced to one of the three grades of punishment. There certainly is enough in this conception of the underlying principle of indeterminate sentence. But it does not seem to have affected the thinking of penologists or perhaps even to have been understood. In 1847 we find a more tangible approximation to the idea. A great deal of thought was being given about that time to the arbitrary nature of sentences and the irrelevancy of the sentences to the crimes or criminals. A number of suggestions were forthcoming for rectifying the situation. One, for example, proposed that there be two kinds of punishment inflicted for all crimes against property; "The first of which shall be longer or shorter according to the number of convictions, the age of the offender, and the circumstances under which the crime was committed, and another which shall in all cases bear a certain definite propor-

tion to the amount stolen.¹ A somewhat different direction is indicated by a suggestion of Mrs. Farnham in the same year. She recommends shorter terms of imprisonment than had usually been given, but without hope of release. This suggestion grew out of her examination of statistics and records relating to pardons, in which she found that the pardons played havoc with the entire system of sentences. She was strengthened in her belief by finding in her experience that imprisonment beyond a certain point of time was distinctly destructive to the purpose and intentions of prisons.

THE INDETERMINATE OR INDEFINITE SENTENCE

A very definite recommendation, framing the indeterminate sentence, appears in an article by a Mr. S. J. May published in the Prison Association report for 1847-9. He says:

You ask me for how long a time he should be sentenced to such confinement? Obviously, it seems to me, until the evil disposition is removed from his heart; until his disqualification to go at large no longer exists; that is, until he is a reformed man. How long this may be, no human sagacity certainly can predetermine. I have therefore for many years been of the opinion that no *discretion* should be conferred on our judges in regard to the length of a convict's confinement; that no term of time should be affixed to any sentence of the court. The offender should be adjudged to undergo the duress and the discipline of the prison-house, not for weeks, months or years, but until that end for which alone he should be put there is accomplished; that is, until reformation has evidently been effected. All attempts by our legislators and ministers of criminal jurisprudence to decide upon the degree of criminality in different offenders must be abortive, because only Omni-

¹ *P. A.*, 1847-8 page 45.

science is competent to do this. Even if human wisdom can ascertain the different quantities of evil flowing through society from the commission of different crimes, surely no legislators or judges can be wise enough to determine the comparative wickedness of those who have committed these crimes. The man who has been convicted only of a petty larceny may be found, when subjected to prison discipline, a much more incorrigible offender than another who committed highway robbery, burglary or arson. . . . One of the greatest improvements in the administration of our penal code would be to withhold from the judges all discretion as to the *time*, for which convicts shall be confined. . . .

No serious attention appears to have been paid to these suggestions or to others that may have been made public, until after the appearance of the Irish system in the fifties. The general interest taken in that system revived somewhat earlier suggestions in the same field, including a very interesting article written in 1846 by Professor De Marsangy in France in which he anticipates those features of the Irish system which were included in the indeterminate sentence and ticket-of-leave plan. It was the Irish system, however, which really brought the possibilities of the indeterminate sentence seriously before American penologists. The years following 1865, when ex-Warden Hubbell visited England and Ireland and came back with a glowing report of the Irish system, were filled with letters, articles and essays written on the system, constituting a very active propaganda for its introduction. In the testimony before the commission of 1866 the idea appeared as already widespread, and was presented by a number of witnesses including prison officials, testifying before the commission. From 1865 to the seventies the growth of the idea was like an avalanche; it broke forth in 1870 in the declaration of principles promulgated by the National Prison Association, organized that

year and meeting for the first time in Cincinnati, Ohio. The first bill, including provisions for an indeterminate sentence was introduced in Michigan and was drawn by Mr. Brockway, then warden of the House of Correction in Detroit, Mich. It followed an earlier attempt on his part to introduce a similar law with a three-year maximum, which failed because it was found unconstitutional by the Michigan Supreme Court (at that time Mr. Brockway claimed credit for conceiving the idea of the indeterminate sentence, but later, in his book, "Fifty Years of Prison Service," disclaims it, saying that at the time he was not aware of Bishop Whately's proposal in 1837, nor had he known of the work of Machonochie and Crofton. The indeterminate sentence bill drawn up by Brockway and introduced in the Michigan House of Representatives in 1871 is probably the most complete form of the indeterminate sentence law ever attempted. It failed of passage, so that the Elmira law passed in 1877 was really the first of its kind, not only in this state but also in the country. The arguments in favor of the indeterminate sentence as presented by Brockway in 1870 were as follows:¹

1. It supplants the law of force with the law of love both in the state administration as a fact, and in the esteem of the people, giving the state thus her true place—no longer "the governor," but the "guardian."
2. It secures certainty of restraint and continued treatment, which operate to prevent crime, as severity does not.
3. It makes possible the arrest and *right* training of that whole brood of beginners, before their character is confirmed and their caste irretrievably determined, which is impossible at present; for, the public mind, filled with the idea of punishment, is opposed to any forcible restraint until great depravity is reached and serious offences committed.
4. It utilizes, for reformatory ends, what, though ever

¹ *P. A.*, 1870, App'x, p. 55, *et seq.*

the strongest motive, is now the greatest hindrance to reformation, in the mind of prisoners, viz., the love of liberty, or the desire to be released. 5. It removes the occasion, and so mollifies the feeling, of animosity usually felt toward the law and its officers; puts the personal interest of the prisoner plainly in line with obedience to rules; and thus renders safe and simple the disciplinary department. 6. It concentrates the faculty of finesse (so common with convicts) and the use of artifice upon the persons charged with their curative treatment, thus securing active and actual contact of mind with mind, and bringing under immediate manipulation that element of character which should first be reached, an attainment so very difficult ordinarily. 7. When falsehood and strategy fail to deceive, as they surely will fail with a wise board, it secures the hearty coöperation of the prisoners for the end in view, an aid without which reformation is impossible. 8. It places the responsibility of fixing the period of imprisonment and the amount of restraint on a responsible head, known to the public, easily reached and reviewed, instead of leaving it to the whim of officers elected by the popular vote, who (as a rule) have neither time nor opportunity to know what is best in the case. 9. While this plan does not necessarily remove the power to determine periods of imprisonment for criminals from the judiciary, it furnishes the advice of experts in examinations, and the advantage of experience not now had. 10. It removes the date of determining the term of detention away from the time of trial, with its excitements, its prejudices, and any influence of popular clamor and affords opportunity to judge correctly the real character of the prisoner. 11. It renders possible the speedy correction of errors and of wrongs, often unintentionally inflicted upon first offenders—those who, only once or twice in a life-time, follow a morbid impulse to the commission of crimes. 12. It accomplishes the return of reformed persons to society at the right moment and at the best point, regulating the amount of restraint, as well as its duration. 13. It retains, through the whole life of the prisoner, if need be, such guardianship as protects society and even the

prisoner himself from his ungovernable impulses, from persecution by the injured or ill-disposed, and from poverty and great want; but, in other cases, relaxing control from time to time, until the new-formed purposes and newly-used powers are determined and developed, when absolute release should ensue. 14. It is constitutional and competent for the legislature to enact such a statute, as I am informed by the highest legal authority. That it is the only sound legal basis of thorough criminal legislation, both deterrent and reformatory, is a growing conviction in legal minds; that it is practicable is demonstrated by the operation of the law in Michigan, passed in 1868, known familiarly as the "three years' law." 15. The writer's experience of more than twenty years, with the most careful study of the whole question of reformation possible, forces the conviction that a reformatory system of prisons cannot exist without it, and that it is quite indispensable to the ideal of a true prison system.

For about fifteen years after its introduction, the indeterminate sentence remained an isolated system at the Elmira reformatory (unless we include the House of Refuge and other children's institutions). Numerous attempts to introduce the system elsewhere, failed. The first important step towards its extension took place in 1892.¹ In that year the penal code of 1881² was thoroughly reorganized introducing for some twenty-three of the felonies listed in the code, a new type of punishment comprising a maximum and a minimum period of sentence. That is, the punishment provided was "not less than" a certain number "nor more than" a certain other number of years in the state prison. An earlier law in 1889³ had authorized the courts to sentence prisoners convicted of such crimes for

¹ Ch. 662, L. 1892.

² Ch. 676, L. 1881.

³ Ch. 382, L. 1889.

which a maximum was provided in the law to a term not less than such minimum nor more than such maximum; it provided that the inmate might be released within that period by recommendation of a "board of commissioners for the parole of prisoners" consisting in each state prison of the superintendent of prisons, the warden, the chaplain, the physician and the principal keeper. That law had remained a dead letter because of the very few prisoners so sentenced. The law of 1892 extended the possibilities of the law by providing a greater number of crimes punishable by a minimum and maximum. The Prison Association in 1892 vigorously attacked the courts for failure to carry out the intent of the laws of 1889 and 1892. The fault seems to have been as much with the office of the superintendent of prisons as with the courts. Several years' agitation to extend the benefits of the indeterminate sentence to the state prisons was unsuccessful. At length in 1901 a half-hearted attempt was made but again foiled by unwillingness on the part of judges to cooperate. There was no real improvement in the situation until the law of 1907,¹ entitling all offenders convicted for the first time of a felony (except in the case of murder in the first degree), to an indeterminate sentence within limits provided by the maximum and minimum determined by law for the specified crime. Various amendments since 1907 have made the indeterminate sentence a fact and a reality. It is still only a half-hearted indeterminate sentence. There are still rigid minima and maxima determined by the court within limits prescribed for each offence in the penal law. But while not sufficiently indeterminate from the full scientific standpoint, and while not supplied with the proper machinery for psychological and sociological examination, nor with the proper organized

¹ Chapter 737, laws 1907.

parole board or parole officers, it nevertheless serves very largely for the disciplinary purposes of the prisons and as an incentive to prisoners to keep their hope fresh and to sustain their courage.

WOMEN'S REFORMATORIES

The indeterminate sentence in women's reformatories was introduced at the time of their organization. It was part of the laws creating them. More than ten years had elapsed between the passage of the indeterminate sentence law for the Elmira reformatory and the organization of the first women's reformatory. There was practically no difficulty about incorporating the principle into these new institutions. At first a maximum of five years, without any minimum, was specified, but the law was later changed and the maximum reduced to three years. There is at present no minimum in any of the women's reformatories and the maximum of three years prevails for all crimes from prostitution to manslaughter.

In local institutions the indeterminate sentence was not introduced until 1915, when a comprehensive law including the indeterminate sentence and parole was passed, rendering the New York Penitentiary and part of the Workhouse subject to the new principle of sentence. The City Reformatory for Misdemeanants, like the women's reformatories, was established when the principle of indefinite sentence had already gained solid foothold in reformatories and it was therefore included in the law creating the institution. The indeterminate sentence law for the City of New York, and the parole system accompanying it, represent perhaps the most comprehensive single development in the state since the Elmira reformatory. The fact that it applies to misdemeanants as well as felons further extends the principle, and its application by local power gives it a uni-

versality which it did not have when restricted to felons in reformatories or state prisons.

PAROLE

Almost from the beginning of the discussion of the indeterminate sentence, parole was spoken of as an integral part of the system. The first appearance of the word parole appears in a letter by Dr. S. G. Howe of Boston, written to the executive committee of the prison association of New York on December 21, 1846. He says: ". . . I believe there are many who might be so trained as to be left upon their parole during the last periods of their imprisonment with safety and with great advantage to themselves . . ." He emphasizes the difficulty that discharged inmates find in governing themselves under their new freedom without training and without preparation for the sudden change. By 1867 the idea of supervision after conditional release, buttressed, no doubt, by the success of the Irish system, seems to have gained wide acceptance, and among other authorities Jeremy Bentham is quoted in the following well chosen-words:

A criminal after having undergone his punishment in prison ought not to be restored to society without precaution and without trial. To transfer him suddenly from a state of supervision and captivity to unrestrained liberty, to abandon him to all kinds of temptations of isolation, misery and of desire, sharpened by long privation, is a mark of indifference and inhumanity. . . .

Emphatic recommendations appear in the annual report of the Prison Association for 1867, from Sir Walter Crofton and from De Marsangy urging that the matter of after-care and parole supervision during the period of conditional liberty be not neglected. When, therefore, the Elmira Re-

formatory was opened and the indeterminate sentence introduced, the idea of parole supervision had had almost as much consideration as the indeterminate sentence itself.

Having accepted both the indeterminate sentence and parole, there remained three things to be done: Provide a paroling body, obtain supervising officers and supply the necessary material and moral aid to the discharged prisoners.

In the House of Refuge a committee of the managing society, designated as the indenturing committee, met weekly, determined which of the children should be indentured, and took full responsibility not only for the act of indenturing but also for the conditions under which the children lived as apprentices. They laid down rules for the children, for the superintendent, and for the master to whom their wards were apprenticed. They were the paroling authority in fact, though the word indenture was used instead of parole. In the reformatories, the boards of managers were designated by law as the paroling authorities, and have acted in that capacity as a body. For the state prisons a "commission for the parole of prisoners" was provided, consisting of certain administrative officers mentioned above. The powers of this commission were later given to the Prison Commission (1901) and then to the Board of Parole (1907). In New York City, a Parole Commission of five members was created (1915) including three appointive members and two officials ex-officio. None of these paroling bodies has as yet attained a scientific standard.

For supervising officers no definite provision appears to have been made in the laws of the reformatories. It was left entirely to the administration of those institutions to make whatever shift they could. The parole law for the state prisoners passed in 1901 was the only one authorizing the appointment of parole officers, one for each prison. As a matter of fact, parole officers have been created from time

to time, until now a definite staff, provided by appropriation laws, exists in all the reformatories, though nowhere as yet sufficient in number and perfect in organization. In the Prison Department the lowest standards of parole supervision obtained. Thus far the City of New York alone has developed a sufficiently large staff, but the work has been carried on for too short a time to justify conclusions as to the calibre of the work performed.

The third essential of parole supervision, namely, that of material and moral aid, has had a somewhat longer history. Since 1824 the laws have authorized the payment of a sum not to exceed \$3 to prisoners discharged from the state prison, and the donation of clothing not to exceed \$10 in value. This provision was included in the laws of 1828 and has, with modifications, continued to the present.¹ With the establishment of the Prison Association, organized work for aiding discharged convicts was introduced, so that, when parole work was undertaken, a fairly comprehensive system of aiding discharged prisoners had been developed and was ready at hand. In fact, the Prison Association acted as official parole agency for the Elmira reformatory from its inception until 1912, when the work was taken over by the Reformatory. In a more unofficial way the Association, and later other voluntary organizations accustomed to relief work, continued to supply aid to discharged prisoners from State Prisons, and to some extent from local institutions whether on parole or otherwise. In 1876 it was suggested that a state agent be appointed to aid discharged convicts, and take over the work of that nature theretofore performed by the Prison Association. Chapter 424 of the laws of 1877 created such an office at the suggestion of the superintendent of prisons. For several years the state

¹ Cf. l. 1847 and ch. 451, l. 1874.

agent functioned in that capacity, but after 1884 his office seems to have been discarded, as too costly and inefficient.

All elements for after-care of discharged prisoners now exist in principle, but are only in rare instances combined with sufficient efficiency to exercise the kind of supervision contemplated when parole was proposed. A great deal of opposition has developed recently to the parole system. It is based mainly on the failure in considerable measure of parole work, attributable almost exclusively to low standards and inefficient application. However, the principle is too well established, and its value too patent to fear its discontinuance even with these very serious handicaps. A detailed account of the extent of parole work and of the varying standards at different institutions, if time and space did not prohibit, would constitute largely a survey of deficiencies and would not help much in the exposition of the merits of parole. A great deal more pressure must be exerted in order to arouse public interest, so that the necessary funds and personnel may be provided. Parole supervision should be not a formal appendage of the indeterminate sentence, but a constructive means for the rehabilitation of the prisoner. This is the function of parole as conceived, and this it must attain before it may take its proper place in the history of penology.

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